

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 238

UNITED STATES, APPELLANT,

vs.

SEALY, INC.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS

Volume IV—Exhibits

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Government's Exhibits—Continued

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[fol. 1081E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 991-H

Sealy, Incorporated Stockholders, By Plants

Allston:

Eagle Mattress Company

Baltimore:

Maryland Bedding Company

Bluefield:

Metcalf Bros., Inc.

Brenham:

Rogers Manufacturing Company

Brooklyn:

Max Kligman
Eugene Kligman

Chester:

Fisher Products Company

Chicago:

Sealy Mattress Company
Leonard Pressman, Trustee
Burton B. & Robert B. Kaplan

Cleveland:

Ernest M. Wuliger

Denver:

Colorado Mattress Manufacturing Company

Des Moines:

Schmitt & Henry Manufacturing Company

Detroit:

**Brown Reliable Bedding Company
Peter D. Brown and/or Dorothy Brown
H. King Brown and/or Diana Brown**

Fort Worth:

**Sleepcraft, Inc.
Louis G. and Mary Haas**

[fol. 1082E] Kansas City:

**David Manufacturing Company
Mrs. Joe Hartman
Mr. and/or Mrs. Isadore Gale**

Lexington:

Peerless Mattress Company

Los Angeles:

Sealy Mattress Co. of Southern Calif.

Louisville:

R. S. Logan

Memphis:

Slumber Products Corporation

Paterson:

Morris Lewis and Samuel Hertz

Pittsburgh:

**Sealy Mattress Sales Company
Slumber Mattress Company
Robert G. Culp
H. F. Kaufman**

Portland:

Pettit Bedding Company

Reading:

Fred G. Hodges Bedding Company

Richmond:

Sidney Sutherland

Rochester:

**Myron Brenner
Louis Gross**

St. Paul:

Sanitary Bedding Company

Schenectady:

Empire State Bedding Company

[fol. 1083E] Waterbury:

Waterbury Mattress Company

Sealy, Inc.:

E. H. Bergmann

[fols. 1084E-1087E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 996

Sealy, Incorporated Report on Examination Year Ended
June 30, 1956

Sealy, Incorporated (a Delaware corporation)

Balance Sheet—June 30, 1956

Assets		Liabilities	
Current:		Current:	
Cash.....	\$ 80,912.44	Notes payable:	
Accounts receivable:		Bank.....	\$175,000.00
Licensees.....	\$460,050.66	Licensees.....	75,000.00
Others (\$17,808.83 from Posture Products, Incorporated).....	60,952.67		\$ 250,000.00
	521,003.33	Accounts payable (trade \$193,944.69).....	199,794.69
Total current assets.....	\$ 601,915.77	Accruals:	
Investments in and advances to other companies at cost:		Federal income taxes.....	\$ 3,915.85
American Telephone and Telegraph Corp. common stock (market value \$40,500).....	\$ 34,574.95	Miscellaneous.....	1,547.93
Posture Products, Incorporated capital stock (advances \$105,000).....	171,585.00		5,463.78
Sealy Sleep Products, Ltd. capital stock.....	2,742.20	Total current liabilities.....	\$ 455,258.47
	208,902.15		
Fixed:		Capital:	
Office furniture and equipment, less accumulated allowance for depreciation of \$15,061.37.....	\$ 31,973.80	Common, \$100 par—shares authorized 5,000; issued 2,500; in treasury 600; outstanding 1,900.....	\$190,000.00
Leasehold improvements, less accumulated allowance for amortization of \$59,686.53....	108,028.01	Surplus:	
	\$140,001.81	Capital.....	41,075.00
Floor samples.....	9,499.05	Earned.....	438,420.82
	149,500.86		669,495.82
Patents, trade-marks and goodwill.....	150,000.00		
Other:			
Prepaid rent (\$12,243.51) and other.....	14,435.51		
Total.....	\$1,124,754.29	Total.....	\$1,124,754.29

[foi. 1089E]

Sealy, Incorporated Statement of Income, Year Ended June 30, 1956

Income:

Royalties (less \$465,072.32 advertising refunds made to licensees).....	\$701,979.68
Commissions and other income—net.....	220,255.88
Market expenses billed.....	19,586.56
Engineering services billed.....	15,253.79
Dividends.....	3,015.00
Interest.....	2,759.31
Other.....	10,386.77
Total income.....	<u>\$973,236.49</u>

Expenses:

Advertising—net.....	\$301,788.37
Salaries.....	191,982.95
General.....	180,374.17
Selling and advertising.....	90,167.50
Market.....	70,228.94
Upholstering.....	18,322.79
Engineering.....	10,366.31
Total expenses.....	<u>863,231.03</u>
Income before federal income taxes.....	\$110,005.46
Federal income taxes.....	2,000.00
Net income.....	<u><u>\$108,005.46</u></u>

[fol. 1090E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 998

Sealy, Incorporated Report on Examination Year Ended
June 30, 1955

[fol. 1091E]

Sealy, Incorporated, Statement of Surplus, Year-Ended June 30, 1955

Capital Surplus

Balance, July-1, 1954 and June 30, 1955, representing the following:

Excess of the par value (\$100) over the purchase price (\$30 per share) on the original acquisition of 579 shares of treasury stock in 1936.....	\$ 40,530.00
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Add:

Excess of selling price (\$105 per share) over par value of 119 shares of treasury stock sold to licensees.....	595.00
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	\$ 41,125.00
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Deduct:

Excess of purchase price (\$105 per share) over par value of 10 shares of stock acquired for treasury.....	50.00
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Balance, June 30, 1955.....	<u>\$ 41,075.00</u>
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Earned Surplus

Balance, July 1, 1954.....	\$265,368.90
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Add:

Net income for the year.....	87,673.96
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	<u>\$353,042.86</u>
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Deduct:

Cash dividends—\$6 per share.....	11,227.50
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Balance, June 30, 1955.....	<u><u>\$341,815.36</u></u>
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[fol. 1092E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 999

Sealy, Incorporated Report on Examination Year Ended
June 30, 1954

Management Company

[fol. 1093E].

Sealy, Incorporated Statement of Surplus, Year Ended June 30, 1954

Capital Surplus

Balance, July 1, 1953 and June 30, 1954, representing the following:

Excess of the par value (\$100) over the purchase price (\$30 per share) on the original acquisition of 579 shares of treasury stock in 1936.....	\$ 40,530.00
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Add:

Excess of selling price (\$105 per share) over par value of 119 shares of treasury stock sold to licensees.....	595.00
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	<u>\$ 41,125.00</u>
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Deduct:

Excess of purchase price (\$105 per share) over par value of 10 shares of stock acquired for treasury.....	50.00
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Balance, June 30, 1954.....	<u><u>\$ 41,075.00</u></u>
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Earned Surplus

Balance, July 1, 1953.....	\$135,906.64
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Add:

Net income for the year.....	137,698.76
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	<u>\$273,605.40</u>
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Deduct:

Cash dividends—\$6 per share.....	8,236.50
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Balance, June 30, 1954.....	<u><u>\$265,368.90</u></u>
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[fol. 1094E] IN UNITED STATES DISTRICT COURT

Sealy, Incorporated Report on Examination Year Ended
June 30, 1953

[fols. 1095E-1096E]

Sealy, Incorporated Statement of Surplus, Year Ended June 30, 1953

Capital Surplus

Balance, July 1, 1952 and June 30, 1953, representing the following:

Excess of the par value (\$100) over the purchase price (\$30 per share) on the original acquisition of 579 shares of treasury stock in 1936.....	\$ 40,530.00
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Add:

Excess of selling price (\$105 per share) over par value of 119 shares of treasury stock sold to licensees.....	595.00
---	--------

	\$ 41,125.00
--	--------------

Deduct:

Excess of purchase price (\$105 per share) over par value of 10 shares of stock acquired for treasury.....	50.00
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Balance.....	\$ 41,075.00
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Earned Surplus

Balance, July 1, 1952.....		\$161,074.69
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Net loss for the year.....	\$16,781.55	
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Cash dividends—\$6 per share.....	8,386.50	25,168.05
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Balance, June 30, 1953.....		\$135,906.64
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Liabilities

Current

Notes Payable

Sears Community State Bank.....	\$106,000.00	
Others.....	30,446.00	\$136,446.00

Accounts Payable.....		45,551.90
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Accrued:

Misc. Expenses.....	\$ 1,138.53	
Federal Income Taxes.....	4,224.31	5,362.84

Total Current Liabilities.....		\$187,460.74
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Nominal

Capital Stock

Common \$100 par-shares authorized 2500: issued 2431; in treasury 959; outstanding 1472.....		\$147,200.00
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Surplus

Capital from stock purchased.....	\$ 41,075.00	
Earned from operations.....	265,368.90	306,443.90
		453,643.90
		\$641,104.64

[Vol. 1103E]

Sealy Incorporated

Statement of Income and Expenses for 12 month period ended June 30, 1954 after audit

Income:

Royalties—Licensees.....	\$779,851.16	Average of
		65,000.00
Posture Products, Inc.....	24,010.23	\$ 803,861.39
Liquidation of Adv. Inventories and Miscellaneous Income.....		150,763.71
Legal Damages.....		1,500.00
T.V. Payments—Contract.....		226,876.07
Engineering services billed—E. J. Guckert.....	\$ 1,300.00	
H. R. Judson.....	9,709.79	11,009.79
Miscellaneous Earnings.....	\$113,546.83	
Dividends.....	2,812.50	
Interest Earned.....	1,505.00	117,864.33
		<u>\$1,311,875.29</u>

Expenses:

Advertising (including magazine advertising of \$81,326.05).....	\$337,958.98	
Advertising Refunds.....	320,744.38	
T.V. Contract.....	209,883.86	
Salaries.....	123,714.66	
Travel.....	13,242.56	
Rent & Market Expense: Chicago, New York, High Point & San Francisco.....	30,347.56	
Professional Services.....	11,502.58	
Directors & Committee Expense.....	17,109.27	
Chicago Office Expenses.....	10,017.69	
Sales Commissions and Expenses.....	16,536.19	
Sales Engineering not billed.....	539.82	
Interest Paid.....	1,944.94	
Social Security (\$1,026.23) and other taxes.....	6,210.34	
Cleveland Office Expenses.....	2,666.24	
Designing & Experimental.....	8,085.53	
Insurance.....	1,208.12	
Miscellaneous.....	6,580.43	
Pension Trust.....	16,800.00	
Regional Meeting Expense.....	8,024.62	
Depreciation—Furniture & Fixtures.....	2,246.98	
Amortisation—Leasehold Improvements.....	15,225.59	
Florida Franchise Expense.....	359.00	
Vigilante Service.....	1,833.96	
Patent Litigation—Serta.....	4,025.72	
Patent Litigation—Simmons.....	6,367.52	1,173,176.53

Income after Federal Taxes for 12 month period ending
June 30, 1954—After Audit.....

\$ 138,696.76

[fol. 1097E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1005

3/12/54

Agenda

Board of Directors Meeting Miami, Florida April 5-6-7, 1954

[fol. 1098E]

1/27/54

1954 Committees, Sealy, Incorporated

Executive

Standing Members

Louis G. Haas, V.P.

M. A. Kaplan, V.P.

Elected Members

P. D. Brown—3 years

W. H. Walzer—2 years

E. M. Wuliger—1 year

Advertising & Merchandising

W. H. Walzer—Chairman

M. A. Kaplan—(Chr. '48-'53)

Edgar J. Haas, Jr.

Joe Rudick

E. M. Wuliger

Sealy Staff

Grievance

H. B. Fouts—Chairman

R. G. Culp

Wm. Rosenfeld

Morris Stein

M. H. Yulman

Licensee Guidance & Advisory

P. D. Brown
M. H. Yulman
J. R. Lawrence—(staff)

Markets

Chicago

M. A. Kaplan—Chairman
Edgar Haas, Jr.
L. G. Haas
C. W. Langstaff
Harry Ryden
E. M. Wuliger

Distant Markets

Boston—W. H. Walzer
High Point—J. V. Moffitt, Jr.
New York—M. H. Yulman
San Francisco—M. Marzluff

New Selling Ideas

J. J. Willens—Chairman
L. G. Haas
Joe Rudick
Jerome Wiener

Planning & Expansion

H. B. Fouts—Chairman
L. G. Haas
Ben Rosenfeld
E. M. Wuliger
M. H. Yulman

Production & Cost

M. I. Walzer—Chairman
L. G. Haas
Edward Siegel
A. Seissel Wayne
Sealy Engineers

Promotional Sales

M. A. Kaplan—Chairman
E. M. Wuliger—(Chr. '52 & '53)
E. J. Kligman
Joe Rudick
W. H. Walzer
Lawton Crosby—Staff
G. C. Shappell—Staff

Sales Managers

Roy Unger—Chairman
M. L. Haas—South
A. L. Goodman—East
C. B. McGillivray—Central
Harry Ryden—Central
M. Marzluff—West

Specifications

M. I. Walzer—Chairman
M. H. Yulman—(Chr. '52 & '53)
P. D. Brown
Edgar Haas, Jr.
H. F. Kaufman
J. J. Willens
Sealy Engineers

Upholstery—Dual Sleep

A. Seissel Wayne—Chairman
L. G. Haas—(Chr. '42 & '53)
King Brown
I. L. Fisher
Edward Siegel

[fol. 1099E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1011

Annual Stockholders Meeting Sealy, Incorporated, Nov. 12,
1954

[fol. 1100E] Minutes of Sealy, Incorporated Stockholders Meeting Held November 13, 1953, Conrad Hilton Hotel, Chicago, Illinois.

1. The meeting was called to order at 1:30 P. M. by the president.

Election of Judges

2. The president appointed Joseph F. Haas and J. R. Lawrence to act as election judges who, after taking the oath of office, examined the proxy and reported as to the number of shares present and authorized to vote as follows: Number of shares outstanding and entitled to vote—1273; present by proxy or in person—1136; in person and by proxy—majority present, constituting a quorum for the transaction of business.

Minutes of 11/20/52

3. The minutes of the stockholders meeting of November 20, 1952 were submitted. Upon motion by R. G. Culp and second by Joseph Rudick the minutes were approved as submitted.

Financial Statement of 6/30/53

4. The audited financial statement of June 30, 1953 was submitted. Mr. Bergmann explained the reconciliation of the taxable income as to a statement which is on the accrual basis. Mr. Sidney Sutherland made a motion that the financial statement be accepted as submitted. This was seconded by Mr. M. Lewis and passed.

Annual Report of President

5. The president made his annual report to the stockholders and commented on the following items: Financial condition, income, net gains, dividends, sales, expansion of personnel, new national headquarters, Sealy Sleep Products, Ltd., legal matters, and prospects for the future of the organization.

Budget for Year Ending 6/30/54

6. Mr. Bergmann reviewed the estimated budget for the year ending June 30, 1954 which has been approved by the Board of Directors.
7. Mr. Bergmann asked if there were any stockholders present that wished to be heard. There were none.

Election of Directors

8. The president asked if the nominating committee, of which Mr. R. G. Culp is chairman, was ready for the nominations for the directors for the coming year. Mr. Culp stated that his committee, consisting of Mr. Brown, Mr. Fouts, Mr. Kligman and Mr. Willens offered the following names as Directors: E. H. Bergmann, P. D. Brown, R. G. Culp, H. B. Fouts, L. G. Haas, M. A. Kaplan, Seniel Ostrow, Ben Rosenfeld, Joseph Rudick, Morris Stein, W. H. Walzer, E. M. Wuliger, and M. H. Yulman, to serve as active directors and Mr. M. I. Walzer, Mr. H. F. Kaufman and Mr. J. J. Willens to serve as inactive directors. Mr. Sidney Sutherland moved that the nominations be [fol. 1101E] closed and that the secretary be directed to cast an unanimous ballot for the election of the above directors. This motion was seconded by Mr. Rosenberg and passed. The secretary was asked to note on the record that the ballot be made.

Next Board Meeting

9. Mr. Bergmann stated there would be a meeting of the Board of Directors the following day for the purpose of organization and election of officers.

Sale of Canadian Trade-Marks

10. The following resolution was offered and adopted by the stockholders: It appearing that the company has filed applications for registration of certain trade-marks of the company under the laws of the Dominion of Canada, and that the Canadian corporation known as Sealy Sleep Products, Ltd. has been organ-

ized by the company for the purpose of licensing manufacturers in accordance with Sealy's standards and specifications in Canada;

Now, Therefore, for and in consideration of these facts,
It Is Hereby Resolved:

That the company shall sell to Sealy Sleep Products, Ltd. all of the company's right, title and interest, in and to all the applications presently on file in the Dominion of Canada for registering in Canada certain trade-marks of the company, and such other applications as may, from time to time, be filed by the company.

Further Resolved:

That the purchase price of such applications and of the right to use such trade-marks in Canada is hereby fixed at \$100,000.00 for the marks presently on application or in process of application.

Further Resolved:

That the officers and directors of the company be and they are hereby authorized and directed to take the necessary action to consummate such transfer and sale, including the execution of all necessary documents, instruments, etc., evidencing the same, the terms of payment to be fixed by the Board of Directors or Executive Committee not to exceed twenty years.

There being no further business before the meeting it was closed at 2:00 P. M.

_____, President.

[fol. 1102E]

Balance Sheet

Sealy Incorporated as of June 30, 1954 After Audit

Assets			
Current			
Cash.....		\$ 3,893.48	
Accounts Receivable			
Royalty.....	\$ 4,228.84		
General.....	203,792.05	208,020.89	
Notes Receivable.....		13,617.64	
Total Current Assets.....			\$225,532.01
Investments			
American T. & T. Co. (225 shares—			
Market Value (\$35,100.00).....		\$ 34,574.95	
Posture Products, Inc. (410 pref. 1,410 common).....		41,335.00	
Sealy Sleep Products, Ltd. (1,450 shares).....		1,492.20	77,402.15
Other Assets			
Notes Receivable			
Posture Products, Inc.	\$ 55,000.00		
Sealy Sleep Products, Ltd.....	4,986.64		
Advances to officers.....	1,200.00		
Floor Samples.....	5,019.80		
Accrued Interest (Posture Products).....	1,000.00		67,206.44
Fixed			
Leasehold improvements.....	\$110,686.87		
Less: Amortization.....	21,635.49	\$ 89,051.38	
Office Furniture & Fixtures.....	\$ 27,758.70		
Less: Amortization.....	6,096.50	21,672.20	110,723.58
Patents & Trademarks.....			150,000.00
Prepaid Assets			
Rent.....	\$ 8,779.17		
Airline Deposit, insurance, etc.....	1,461.29		10,240.46
			<u>\$641,104.54</u>

[fol. 1104E] President's Report to Stockholders Sealy, Incorporated as of the Close of the Fiscal Year Ended June 30, 1954.

"In this report your President will briefly state pertinent facts regarding the corporate structure, financial position, sales progress and other activities of your corporation for the fiscal year which ended on June 30, 1954."

Corporate Organization

The corporation has an authorized capital of \$250,000.00 consisting of 2,500 shares of common stock, of a par value of \$100.00 per share. As of June 30, 1954, 2431 shares of this stock had been issued, of which 959 shares was classified as Treasury stock. Since June 30, 1954, all of the remaining 69 shares of unissued stock was sold. In addition, 359 shares of the 959 shares of stock classified as Treasury Stock was offered to stockholders on a preemptive basis. All of the stock so offered was purchased except 61 shares which was divided equally on a per plant basis. There remains, as of the date of this report, only 600 shares of Treasury Stock which has not been offered for sale. The Board of Directors on September 20, 1954 passed a resolution that the remaining 600 shares of stock could only be sold on the basis of the pre-emptive rights of the then existing stockholders.

Financial Condition

Assets

Current Assets, consisting of cash, notes and accounts receivable, amounting to \$225,532.01, are more than sufficient to cover the entire amount of Liabilities of \$187,460.74. All of the notes and accounts receivable are current.

Investments consisting of stock of the American Telephone & Telegraph Company, Posture Products, Inc. and Sealy Sleep Products, Ltd. amounted to \$77,402.15.

The investment of certain funds in the stock of the American Telephone & Telegraph Company and Posture

Products, Inc. is for the purpose of fulfilling the corporation plan of accruing an investment, over a period of years, of \$150,000.00, so that the Asset of Patents and Trademarks will be represented by an actual cash value.

The market value of the 225 shares of American Telephone & Telegraph Company, at the date of this report, which cost \$34,574.05, is approximately \$38,790.00.

[fol. 1105E] The book value of the stock owned in Posture Products, Inc. is in excess of the purchased cost of \$41,335.00. The estimated obtainable value of the assets of this company are far in excess to what are shown as book values. The 1410 shares of Common Stock, owned by your corporation, represents the voting control of the outstanding Common Stock of that company.

The 1450 shares of stock, owned by your corporation, in Sealy Sleep Products, Ltd. represents voting control of that corporation. This voting control is to be maintained until the purchase of the Sealy Tradename, Trademarks, in the amount of \$100,000.00, is fully paid. An additional 1,250 shares of the stock of this corporation has been acquired, making a total holding as of the date of this report of 2,700 shares.

Other Assets

Notes Receivable, in the amount of \$55,000.00, from Posture Products, Inc. represents cash advanced for the necessary expansion of that company, which was estimated at \$150,000.00, one-half of which was to be borrowed by Posture Products, Inc. from the Sears Community State Bank for five years, the remaining half was to be advanced by Sealy, Inc. with the understanding that repayment was to await the payment of the indebtedness to the bank. The five quarterly payments due to the bank since the loan was made have been paid. Interest on the money advanced by your corporation, at the rate of $4\frac{1}{2}\%$ and $4\frac{3}{4}\%$, has been paid to December 31, 1954.

The amount of \$4,986.64 shown as due from Sealy Sleep Products, Ltd. represents expenditures necessary in the organization of this company. Repayment of these advances began on July 1, 1954 at the rate of \$400.00 per month.

Leasehold improvements on market spaces, directly supervised by your corporation, at Chicago, New York and

High Point are amortized, for tax purposes, over the length of the leases for the respective spaces.

The total of all of the Assets, of your Corporation, as of June 30, 1954, was \$641,104.64.

Liabilities

The entire amount of current liabilities shown on the June 30, 1954 statement, amounting to \$187,460.74, has been paid with the exception of \$7,002.00, which represents funds advanced by the nine plants of the Eastern Division for the cost of air-conditioning of the New York space at One Park Avenue and \$4,224.31 for Federal Taxes for the fiscal year ended June 30, 1954, which will be paid as they become due.

[fol. 1106E]

Capital and Surplus

The total face value of the shares of outstanding stock of your corporation, which as of June 30, 1954, was \$453,643.90, clearly indicates that the capital and surplus is more than sufficient to cover the obligation for the outstanding stock.

Dividends

The corporation paid all Dividends due and declared for the year at the rate of \$6.00 per share. The quarterly dividend due on September 1, 1954 has been paid. The Dividend due on December 1, 1954 has been declared and will be paid on December 15, 1954.

Income

Income from Royalties paid by Licensees, amounted to \$779,851.16, or an average of \$65,000.00 per month. Your management goal is \$1,000,000.00.

Royalties received from Posture Products, Inc. during the past fiscal year, for use of the Durolife Trademark, amounted to \$24,010.23. Since this royalty is not subject to the 40% Advertising Refund Policy it is equivalent to a royalty paid by a Sealy licensee, in the amount of \$40,000.00.

Miscellaneous earnings, amounting to \$113,546.83, represents corporation earnings from spring manufacturers for use of the Durolife Trademark, volume rebates on the purchase of Miracle Mesh, Rubber, Labels, catalogue sales,

lounge constructions and sundry supplies, all without any penalty to our licensees.

Expenditures

Expenditures in the form of national advertising and rebates to licensees for local advertising amounted to \$658,703.36. This is 85.7% of the total royalty received from licensees.

Total salaries paid to all employees, less the amount billed for engineering services, amounted to a net expenditure of \$112,705.07. Miscellaneous earnings totaling \$113,546.83, representing extra curricular activities by the Staff, was more than sufficient to cover the entire amount of salaries paid.

Deposit to the Employee Pension and Retirement Fund, in accordance with direction of the Board of Directors who instituted the program on March 18, 1953, was \$16,800.00.

Expenditure for special legal counsel for the prosecution of corporation's suit of the Serta Associates for Trade-mark infringements and unfair trade practices, amounted to \$4,025.72. Cost of special legal counsel employed for the defence of the patent infringement suit instituted by the Simmons Company against the corporation was \$6,367.52.

[fol. 1107E] The net gain, for the year ended June 30, 1954, reported for Federal Income Taxes, on a cash basis, was \$17,235.37. Provision of \$4,224.31 was made for current federal taxes on the income reported.

Sales Progress

Net sales, upon which royalties are paid, from 1948 to September 30, 1954, are as follows:

1938	\$10,993,255.00
1949	13,212,387.00
1950	17,454,063.00
1951	17,759,151.00
1952	25,299,792.00
1953	31,166,685.00
9 months of 1954	27,754,529.00

The above schedule clearly indicates that substantial progress is being made in our sales program. It also bespeaks

of the correctness of judgment of the Advertising and Merchandising Committees in the programs developed.

Showrooms

The new and larger space for the National Executive offices and the Chicago Market space was sufficiently completed in time for use during the January 1954 market. The entire program was completed well before the June 1954 market. An additional lighting program, to improve the brightness of the Sealy space in the hallway will be completed in time for the January 1955 market.

The New York market space at One Park Avenue was air conditioned during the past year.

The High Point market space has been completely refurbished and is ready for the January 1955 market.

The corporation also participates in the rental cost of the Boston and San Francisco market, this participation being the percent of the royalties paid by the participating plants (must be at least three differently owned plants) to the total royalties by all plants.

Sealy Sleep Products, Ltd.

The Canadian corporation, Sealy Sleep Products, Ltd., began operations actively during December 1953. Licensees have been established in Montreal, Toronto and Edmonton. Negotiations are being conducted for a licensee to be established in Winnipeg. Sealy sales until June 30, 1954 amounted to \$215,215.00. Royalty paid to the same date was \$6,456.73. Sales and royalties have continued to increase. [fol. 1108E] A modest advertising budget has been scheduled for the last half of 1954 and Sealy ads are appearing in Canadian magazines equivalent to the American Magazines such as Life, House and Garden, and the Journal of the American Medical Association. These Canadian ads appear in both English and French.

National Conventions

During the current year Sealy exhibits were staffed by the corporation at the national conventions of the American Medical Association, American Osteopathic Association.

tion, National Chiropractic Association, and the American Academy of Pediatrics. The corporation will continue to exhibit in these national conventions during the current fiscal year. y

Conclusion

In conclusion may I repeat what I said a year ago regarding the "Spirit of Sealy" because it still applies. *Most of our people realize and are firmly convinced that their individual welfare depends upon a strong national organization and that individually their future will rise or fall as Sealy rises, falters or falls nationally. Most of our people will not leave a stone unturned to strengthen the national effort. Most of our people religiously follow the rule that what the majority feel is the best for Sealy they will accept individually. This is what is leading Sealy to the top. This is the Esprit De Corps of Sealy.*

It is written "that of necessity some are chosen to lead while all others of necessity must follow". It is no different with our organization. It might be likened to that of the locomotive, its operation and the string of cars which it pulls. Sealy is the locomotive. The various committees are the firemen who do the actual work of shoveling the fuel of ideas that keep the boilers of the locomotive hot so that a sufficient supply of steam is generated to maintain our forward motion. Obviously, all cannot be firemen, some must be the cars necessary to complete our train of national endeavor, and whether they are loaded to capacity with acceptance of and enthusiasm for the speed of the locomotive, they are drawn along on the ride with very little effort on their part as compared to those who so willingly devote their time to the shoveling of the coal for our national program.

It is with this fact in mind that I offer my thanks to those who have so *faithfully* and *willingly* served during the ~~last~~ year. Particularly is this true for those members of the advertising and merchandising, and upholstery committees.

Respectively submitted, 11/12/54, E. H. Bergmann,
President.

[fol. 1109E] Officers and Directors—Sealy, Inc. for 1954

E. H. Bergmann

P. D. Brown

R. G. Culp

Irv Fisher

H. B. Fouts

Edger Haas

L. G. Haas

M. A. Kaplan

H. F. Kaufmann—Alternate

Ben Rosenfeld

J. R. Rudick

M. I. Walzer—Alternate

E. M. Wuliger

J. J. Willens—Alternate

W. H. Walzer

M. H. Yulman

Officers

President—E. H. Bergmann

Secretary-Treasurer—J. R. Lawrence

Vice-P.—M. A. Kaplan

Executive Committee

M. A. Kaplan, Chairman—Standing member

L. G. Haas—Standing member

P. D. Brown—Term expires 1956

W. H. Walzer—Term expires 1955

E. M. Wuliger—Term expires 1954

Nominating Committee

H. B. Fouts, Chairman

Ben Rosenfeld

M. H. Yulman

[fol. 1110E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1012

Manufacturer's Contract.

This Contract, made at Pittsburgh, in the State of Pennsylvania, this 1st day of *September*, 1936, by Sealy, Incorporated, a Delaware corporation, hereinafter called "Sealy", and *The Ohio Mattress Co.*, an *Ohio* corporation, having a regular place of business at *Cleveland*, in the State of *Ohio*, hereinafter called "Manufacturer",

Witnesseth:

Whereas: Sealy has certain trade-marks, trade names, methods, processes, specifications, and good will, which are of distinct value in the manufacturer and sale of mattresses, studio couches, bed springs, bedding and similar products; and

Whereas, Manufacturer is a stockholder in Sealy, and it and other stockholders in Sealy are now engaged in the business of manufacturing and selling mattresses, studio couches, bedding, bed springs and similar products, and have adequate and suitable facilities for manufacturing and selling Sealy Products; and

Whereas, each and every such stockholder in Sealy desires to manufacture and sell, in addition to its present products, Sealy Products, within an exclusive territory and under the terms and conditions hereinafter set forth; and

Whereas, Sealy desires to assign exclusive territories to such stockholders and to contract with them, as independent contractors, to manufacture and sell Sealy Products therein,

[fol. 1111E] Now, Therefore, in consideration of the premises and of the mutual agreements herein contained, it is hereby agreed between the parties hereto as follows:

Definition of "Sealy Products"

1. As used throughout this contract, the term "Sealy Products" shall mean all mattresses, studio couches, bed springs, box springs, pillows and cushions, manufactured,

or to be manufactured, and/or sold, bearing or having affixed thereto in any manner, the Sealy-trade-name, and/or trade marks, or in any other fashion the word and name "Sealy".

Right to Manufacture and Sell

2. Manufacturer will, as an independent contractor and at its own expense, during the term of this contract, manufacture Sealy Products, to-wit: Mattresses, studio couches, bed springs, box springs, pillows and cushions, and will do so under and strictly in accordance with the Sealy patents, methods, processes, exclusive rights, licenses, and specifications, now owned or controlled or hereafter acquired or controlled by Sealy, and sell the same within the territory hereinafter defined, under the Sealy trade name and trademarks, so that the market and demand for said Sealy Products in the territory hereby allotted to Manufacturer will be satisfied so far as it is reasonably possible to do so, and Manufacturer further agrees it will use its best efforts to enhance the popularity and demand for said Sealy Products in the said territory.

Specifications

3. A true and correct copy of the specifications for the manufacture of Sealy Products is attached hereto, made a part hereof and marked "Exhibit A". Manufacturer agrees to manufacture all Sealy Products strictly in accordance with said specifications. At any time or times the Board of Directors of Sealy may, by a two-thirds vote of all of its members, change said specifications and/or promulgate specifications for additional Sealy Products. When new [fol. 1112E] specifications are thus prepared or the specifications are thus changed for any Sealy Product and notice thereof, as defined in this agreement, is given to Manufacturer, such new or changed specifications shall become a part of this contract and after ninety (90) days have elapsed after said notice Manufacturer shall manufacture each Sealy Product strictly in accordance with said new or changed specifications.

4. Manufacturer also agrees that all materials, patents, designs, specifications, copyrights, processes, trademarks,

trade names and/or methods and/or the right to use the same, that are or shall become exclusive to or the property of Sealy, or which Sealy controls or has interest in, now or in the future while this contract is in force, shall be used only in the manufacture and sale of Sealy Products.

Methods and Processes

5. Sealy agrees to furnish Manufacturer, upon demand full information concerning its methods and processes, together with technical advice and directions as to the best methods of manufacturing Sealy Products. Manufacturer agrees to manufacture Sealy Products strictly and faithfully in accordance with the processes, methods, and directions from time to time furnished by Sealy. Said methods, processes and directions may be changed from time to time by Sealy or new ones promulgated by a two-thirds ($\frac{2}{3}$) vote of all the members of the Sealy Board of Directors. Said new or changed methods, processes and directions shall become effective as in the case of new or changed specifications.

Supervision by Sealy

6. Sealy shall exercise supervision and control over the manufacturer of all Sealy Products by Manufacturer so as to insure that said products are made in conformity with Sealy specifications, processes, methods, directions and pat-[fol. 1113E] ents and with the provisions of this contract. To enable Sealy to exercise such supervision and control, Manufacturer will furnish to Sealy, on demand, specimens of products manufactured under this contract and samples of the materials used and will afford duly accredited representatives of Sealy access to its factory and warehouses at reasonable times.

Rights to Advertise

7. Manufacturer may advertise Sealy Products by means embodying or employing Sealy trade names, trade-marks, and labels. However, Manufacturer will discontinue any advertising of Sealy Products which is objectionable to Sealy, on notice by Sealy.

Patent, Trade-Mark Infringement

8. Sealy agrees to defend at its expense any and all suits against Manufacturer for or on account of any alleged infringement, while this contract is in force, of any patent, copyright, trade-mark, or trade-name by the manufacture or sale by Manufacturer, in accordance with the provisions of this contract, of any Sealy Products; and to pay any judgments or decrees recovered in law or in equity against Manufacturer upon such claims or any of them.

9. Sealy agrees not to sue Manufacturer for infringement of any of its patents, copyrights, trade-names, trade-marks, methods, or processes by reason of any act committed by Manufacturer during the term of this contract, and in accordance and compliance with it.

Use of Name "Sealy" Admission of Sealy's Rights

10. Manufacturer may use the word "Sealy" in its corporate or business name and as a trade-mark or trade-name, in the form prescribed by Sealy, on all Sealy Products made by it during, but only during, the life of and while fully complying with this contract. On any termination or [fol. 1114E] breach of this contract, all rights given to Manufacturer hereunder shall cease and Manufacturer shall forthwith drop the name "Sealy" from its corporate or business name and from its products, and shall not thereafter use the word "Sealy" or any of the "Sealy" patents, copyrights, trade-marks, trade names or labels. Manufacturer admits and concedes that Sealy is the full and complete owner, in its own name and right, of the patents, copyrights, trade-marks, and trade names, under and by which Sealy Products have been and are to be manufactured, and disclaims any interest therein and any right thereto or any right to manufacture and/or sell any of said products except in accordance with this contract. Manufacturer expressly agrees that it will comply with the above provisions even if it has heretofore used the word "Sealy" in its name and/or in its business and/or on its products.

Territory

11. The exclusive territory hereby allotted to Manufacturer is as follows: The following counties of Ohio: Erie,

Lorain, Cuyahoga, Medina, Summit, Portage, Geauga, Lake, Ashtabula and Trumbull, Lucas, Ottawa and Sandusky.

Release of Sealy Territory

12. As part of the consideration of this contract, and in consideration of the like and mutual releases by several other stockholder-manufacturers of Sealy which they and Manufacturer believe to be for their individual and mutual benefit and to the best interest of Sealy, Incorporated, Manufacturer agrees to relinquish and release, and does relinquish and release to Sealy, in the whole and every part of Sealy Territory " ", as shown on Sealy Territories Map #2, attached hereto, made part hereof and marked "Exhibit C", all of its claims and rights of every nature to manufacture and/or sell Sealy Products and all rights and claims of every nature to in any way use or make use of the Sealy trade names, trade-marks, labels, copyrights, patents and/or exclusive rights now owned or [fol. 1115E] controlled or hereafter owned or controlled by Sealy.

Approval of Manufacturers in Certain Cases

13. After execution of this contract, and as long as it is in force, Sealy will not contract with or grant any rights to any person, partnership, association or corporation for the manufacture and/or sale of Sealy Products within a part or the whole of Sealy Territory " " as the same is shown and delimited on Sealy Territories Map #2, attached hereto, made part hereof and marked "Exhibit C", without the approval by the Board of Directors of Sealy of the qualifications of said proposed person, partnership, association or corporation to manufacture and sell Sealy Products.

14. Sealy will not manufacture nor sell, nor will it, without the consent of Manufacturer, contract with or permit any other individual, partnership, association or corporation, to manufacture or sell Sealy Products within the exclusive territory above set aside to Manufacturer, so long as this contract is in force. Sealy shall pay to Manufacturer, upon demand, as liquidated damages, \$10.00 for each mattress, studio couch or other Sealy Product sold or

shipped into Manufacturer's exclusive territory by Sealy, and \$10.00 less the cost of collection of the same, for each such article sold or shipped into Manufacturer's exclusive territory by any person, partnership, association or individual, which has in effect a contract with Sealy, identical or similar to this one; provided, that Sealy has succeeded in collecting the said \$10.00 for each such article from said person, partnership, association or corporation.

15. Manufacturer shall not sell, ship or deliver Sealy Products outside of its exclusive territory, nor shall it make any sale of Sealy Products, if it knows that the purchaser intends to resell, deliver or ship the same for resale [fol. 1116E] out of said exclusive territory, nor shall it sell, ship or deliver any Sealy Products to any mail order house, without Sealy's written consent. For each violation of the next proceeding provision, Manufacturer shall pay to Sealy, upon demand, the sum of \$10.00 for each mattress, studio couch or other Sealy Product sold in violation thereof. On notice from Sealy, Manufacturer will promptly discontinue making such sales and/or shipments.

Manufacturer's Good Faith

16. Manufacturer shall not aid, abet or assist any other corporation, partnership or individual to do anything which might in any way constitute a violation of any provision of this contract or an infringement of any of the patents, copyrights, trade-marks, and trade names of Sealy. Manufacturer will not sell or deliver to others, or aid or assist others in the use of, any of the Sealy labels, brands, or materials, without the written consent of Sealy, and will cooperate with Sealy in every way possible to carry out the provisions of this contract and to secure the best possible results in carrying out this and other similar contracts.

Inferior Products

17. Manufacturer shall conduct its business under this contract in an efficient and business-like manner and shall use its best efforts to enhance the popularity of Sealy Products and to create a greater demand for said products. To that end, it will manufacture and sell said products strictly in accordance with this contract and will pay to Sealy, on

request, the full retail price of any Sealy Product, sold by it to any purchaser, on the production of evidence that said product was not made in accordance with this contract, or that it was mislabeled or misbranded, or that, in the manufacture of it, inferior materials or workmanship were used, so that Sealy may replace any such product, which Sealy engages to do upon payment as aforesaid.

[fol. 1117E]

Price Control by Sealy

18. Sealy believes that the good will of Sealy Products will be seriously damaged and their effective distribution interfered with unless they can be sold at prices which insure reasonable profits. To the end that price cutting on Sealy Products may be prevented, Sealy, after considering the manufacturing and marketing conditions of Manufacturer, may suggest to Manufacturer the minimum price at which, in its opinion, each item of Sealy Products manufactured under this contract should be sold by Manufacturer. Sealy may from time to time change such minimum price suggestions and shall notify Manufacturer in writing of all such changes. Failure of Manufacturer to observe said minimum prices in any instance shall give Sealy the right to terminate this contract, after the fact of such failure is determined by arbitration as herein provided for, but such failure on part of Manufacturer shall not give Sealy any right to damages or other right against Manufacturer.

Records and Reports of Manufacturer

19. Manufacturer shall keep detailed, accurate, and complete records and accounts of all Sealy Products made in its territory during each month under this contract, and shall give to Sealy or its authorized representatives free access to all of said records and accounts and the right to audit and make copies of and statements from said records and accounts, at any and all reasonable times. Manufacturer shall make up and send to Sealy, on or before the fifteenth (15th) day of each month, a true and complete report of all of said products made in its territory during the preceding month.

Trade-Marks, Trade Names and Labels

20. No Sealy Products shall be sold by Manufacturer without having affixed to it a Sealy label embodying a Sealy trade mark or trade name. No Sealy trade-mark or trade name shall be affixed to a Sealy Product or appear thereon other than by a Sealy Label. All Sealy Labels [fol. 1118E] shall be in the form prescribed by Sealy. No Sealy Label shall be affixed to any product other than a Sealy Product, as herein defined. Sealy Labels shall be obtained by Manufacturer in the following manner and not otherwise:

Sealy will designate a person or company to furnish Sealy Labels to Manufacturer. Manufacturer, desiring Sealy Labels, shall send to Sealy, in duplicate, a regular, duly executed order on the said designated label manufacturer or distributor for the amount and kind of Sealy Labels desired, together with a check to the order of Sealy in an amount equal to the total of the sums required to be paid for said labels ordered under the terms of paragraph 21 hereof. When these conditions are complied with, Sealy will promptly transmit the original order to the designated label manufacturer or distributor for fulfillment. Manufacturer will then pay the cost of the labels direct to the label manufacturer or distributor. Manufacturer specifically agrees that it will neither order Sealy labels directly from the designated label manufacturer or distributor, nor obtain Sealy Labels in any manner whatsoever other than that herein prescribed.

Manufacturer's order for any Sealy Labels under this paragraph shall be for a quantity of not less than fifty labels of the particular class ordered, as the same are classified in paragraph 21 hereof, and if labels of more than one class are ordered, the order shall be for a minimum of fifty labels of each class of labels ordered.

21. Manufacturer shall pay to Sealy, by the procedure prescribed in paragraph 20 hereof, as consideration under this contract, the following amounts for Sealy labels ordered under the provisions of said paragraph 20:

[fol. 1119E] (b) However, the amount of this minimum consideration due and payable for any such month shall be reduced by the amount paid for labels during said month at

the rates and under the terms of paragraph 21 hereof, and if the amount so paid for labels exceeds the minimum consideration, no minimum shall be due and payable for said month.

Carry-Over Credits

(c) Not later than the fifteenth day immediately following the end of the first month after the effective date of this contract, and not later than the fifteenth day immediately following the end of each and every such month thereafter, Manufacturer shall pay to Sealy the amounts becoming due and payable under this paragraph. However, at the end of each six months following the effective date of this contract, or at the end of any lesser period in the event of a termination of this contract under the provisions hereof, if the amount paid to Sealy by Manufacturer during such period under the terms of paragraph 21 and of this paragraph exceeds the product of the minimum amount payable per month under this contract times the number of months contained in said period, then Manufacturer shall be entitled to a credit in the total amount of any minimum payment or payments made by it under the provisions of Sections (a) or (b) of this paragraph during such period, but not to exceed the difference between the total amount paid under the terms of paragraph 21 and of this paragraph, and the product of the minimum amount payable per month times the number of months contained in said period. This credit shall be applied, in Manufacturer's discretion, either as a credit on future purchases of Sealy labels, or on a minimum payment or payments becoming due and payable under the terms of this paragraph. In the event this contract is terminated while such credit still stands in favor of Manufacturer, then Sealy shall pay the amount of the same [fol. 1120E] to Manufacturer, but if there is any indebtedness then owing from Manufacturer to Sealy then Sealy shall have the right to apply the said credit to said indebtedness.

Voting Trust

23. Manufacturer agrees, as part of the consideration of this contract, to become a party to a Voting Trust Agreement, a true and correct copy of which is attached hereto

and marked "Exhibit B", and to deposit 60% of its Sealy stock with the Voting Trustee named therein, and otherwise comply with the terms thereof, in order that the purposes and plan of this and similar contracts may be properly executed, such Voting Trust being deemed necessary to the successful operation of said contracts and to the success of Sealy, Incorporated. However, this contract and said Voting Trust Agreement shall be deemed separable, and invalidity of said Voting Trust shall not affect this agreement.

Transfers of Sealy Stock Option in Sealy to Buy Manufacturer's Stock

24. On each stock certificate or voting trustees' certificate for Sealy stock issued to Manufacturer, there shall be stamped or printed a proper notation showing that it is issued and held subject to the provisions of this contract. If this contract is terminated under any of its provisions, or if Manufacturer shall at any time desire to sell or transfer all or part of its Sealy stock or voting trustees' certificates; other than at the request of Sealy as provided for in paragraph 25 hereof, without an assignment to the buyer or transferee of all its rights under this contract in said entire exclusive territory, Sealy shall have an option for thirty (30) days to purchase the stock or voting trust certificates which Manufacturer desire to sell or transfer, or owns—in the case of termination, at the price of \$100.00 per share. But, if Manufacturer shall have in any such case a bona fide offer or offers to buy all or part of said stock, or certificates, then it shall furnish to Sealy, satisfactory [fol. 1121E] evidence of said offer or offers with the names of the parties making the same and the complete terms thereof, and Sealy in such case shall have an option for 30 days to purchase said stock or certificates at the highest price at which Manufacturer has a bona fide offer to buy, whether such offer be for more or less than \$100.00 per share. Manufacturer must give notice, as defined in this agreement, to Sealy of its desire to sell or transfer its said Sealy stock or its voting trustees' certificates representing the same, and of such offers as it has, and any sale or transfer covered by this paragraph without such notice to Sealy shall be null and void. The 30 day option period

shall run from the date of such notice to Sealy. If Manufacturer does not sell said stock or the voting trustees' certificates representing the same to the party making the said offer within 30 days after the expiration of the said option, then said stock shall be and remain subject to the terms of this paragraph. In order to retain its rights under this contract, Manufacturer must retain at least five shares of its stock in Sealy or Voting Trustees' certificates representing the same.

Manufacturer's Agreement to Transfer Stock in Certain Cases

25. As part of the consideration of this contract, Manufacturer agrees to sell and transfer, at the price of \$100.00 per share, at the request of Sealy, at least three shares but not in excess of six shares of Sealy stock (not voting trustees' certificates representing the same), the exact number to be determined by Sealy, to any person, association, partnership, or corporation with whom Sealy, after the execution of this contract, contracts for the manufacture and sale of Sealy Products within Sealy Territory " as shown and delimited on Sealy Territories Map No. 2, attached hereto, made part hereof, and marked "Exhibit C".

[fol. 1122E] Termination Without Arbitration

26. In the event Manufacturer shall become insolvent, present a voluntary petition in bankruptcy or be involuntarily adjudicated a bankrupt, shall suspend its business, shall make an assignment for the benefit of creditors or shall suffer a receiver to be appointed, then automatically and simultaneously this contract shall be terminated.

Arbitration

27. All claims, demands, disputes, controversies, differences or misunderstandings between the parties hereto, arising under, through or by virtue of this agreement, except the matters referred to in the preceding paragraph, shall be submitted to arbitration before the arbitrators hereinafter provided for according to the procedure hereinafter prescribed. Each of the parties hereto, in case of an

arbitration, shall select one arbitrator and the two arbitrators so selected shall select a third arbitrator. The three so selected shall act as an arbitration board and shall hear and determine all matters and questions then involved. The party desiring an arbitration at any time shall give notice to the other party, stating the arbitrator selected by it and his address, and stating concisely in its complaint all matters to be arbitrated and its contentions in connection therewith. The failure of the party so notified to inform the first party of the name of its arbitrator and his address within 30 days thereafter, and to serve an answer stating its contentions in the matter on the first party within said time shall be an admission of the matters set forth in the complaint and the matters shall conclusively be considered as having been settled in favor of the complainant. The parties hereto shall serve on the Board copies of the statements of their contentions within 10 days after the Arbitration Board has been selected. The arbitration Board may make its own investigation, and may hear both sides orally or in writing. Failure by either of the parties to take the [fol. 1123] steps required by this paragraph shall automatically act as an adjudication against it. A decision by the majority of the arbitrators shall be final, binding and conclusive. If the arbitrators find as a fact that a party has breached this agreement, it shall be optional with the other party to terminate this agreement, but this right of termination shall not preclude any other remedy for breach of contract in lieu thereof. The arbitrators in their decision may assess the costs of the arbitration proceedings against any or all parties thereto.

Termination to Release From Obligations Already Accrued

28. No termination of this contract shall release Manufacturer or Sealy from any obligation on its part which has accrued up to the time of said termination. Failure of Sealy to notify Manufacturer of any breach of this contract, or any default under it, shall not constitute a waiver of any such breach or default, or a waiver of the right of SEALY to terminate this contract at a later date on account thereof, or on account of any other subsequent breach or default.

Manufacturer Not Sealy's Agent

29. Manufacturer shall have no authority to bind Sealy upon any contract or obligation whatsoever. Nothing in this contract shall be construed as constituting Manufacturer an agent of Sealy for any purpose. Sealy shall not be liable for any acts or omissions of Manufacturer, except as elsewhere herein may be expressly provided for, for any satisfactory merchandise made or sold by Manufacturer, or for any misrepresentations made by Manufacturer.

Notices

30. All notices provided for or to be given under this contract shall be in writing and shall be given by registered mail to or served personally on the party to be notified. When sent by registered mail, it shall be considered to have been given at the time when said registered mail notice [fol. 1124E] should have been delivered, in the regular course of the transportation and delivery of such mail from the place which it was registered to its destination.

Assignment of Rights Under this Contract

31. Manufacturer shall not assign or transfer its rights under this contract in the whole of the territory in which it has such rights, without the consent of Sealy. Manufacturer shall not have the power to assign or transfer its rights under this contract within a part of the territory herein granted. This contract is personal with Manufacturer and cannot be assigned or transferred in whole or in part by act of Manufacturer or by operation of law, without the consent of Sealy.

Effective Date

32. This contract shall not become binding on either of the parties hereto until a similar contract has been executed by each of the stockholders or voting trustees' certificate holders of Sealy now manufacturing and selling Sealy Products.

Termination

33. This contract may be terminated by Manufacturer for any reason by giving six months notice to Sealy of its intention so to terminate. Sealy may terminate this contract without advance notice but only because of a breach of this contract by Manufacturer. The question whether there has been a breach shall first, however, be determined by arbitration under the provisions of paragraph 27 hereof. If this contract is not terminated by either of the aforesaid methods or under the circumstances of paragraph 26 hereof, then it shall remain in full effect until it is terminated by mutual consent of the parties hereto.

34. This contract shall be deemed separable and if any portion hereof shall be held invalid for any reason, the remainder shall not thereby be invalidated but shall remain in full force and effect.

35. This contract is executed in duplicate.

[fol. 1125E] In Witness Hereof, the parties by their duly authorized officers or agents, have caused this agreement to be executed, intending to be legally bound thereby, the day and year first above written.

Sealy, Incorporated, By — —, President.

Attest:

Earl H. Bergmann, Secretary.

The Ohio Mattress Co. By Frank Wuliger.

Witness:

Dorothy F.

[fol. 1126E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1013

This Agreement Made at Pittsburgh, Pa., this 1st day of December, 1937, by and between Sealy, Incorporated, a Delaware Corporation, hereinafter called "Sealy", and The Ohio Mattress Company, an Ohio corporation, having a regular place of business at Cleveland, in the State of Ohio, hereinafter called "Manufacturer",

Witnesseth:

Whereas: Sealy and Manufacturer on the 1st day of September, 1936, executed at Pittsburgh, Pennsylvania, a certain contract called "Manufacturer's Contract", providing for the manufacture and sale of Sealy products under specified terms and conditions, and within a limited territory therein defined; and

Whereas: Sealy and Manufacturer are desirous of adding certain territory to that heretofore referred to, under certain terms and conditions, and extending the terms and provisions of the aforesaid contract to said additional territory, under certain terms and conditions, for a time hereinafter limited;

Now Therefore, In consideration of the promises and mutual agreements herein contained, it is hereby agreed between the parties as follows:

1. All of the rights, benefits, and privileges conferred upon Manufacturer by the aforesaid contract for the territory hereinbefore referred to, are hereby extended and granted to Manufacturer for the following additional described territory:

[fol. 1127E] In Michigan:

Washtenaw, Monroe, Wayne, Oakland, Macomb, Saint Clair, Lapeer, Genessee, Livingston, and Lenawee.

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with the same force and effect henceforth as if said additional territory had been originally included in said contract, provided, however, that the said rights, benefits, and privileges may be terminated in and with respect to the

above described additional territory at any time in the future when Sealy desires to terminate the same, by Sealy giving Manufacturer thirty days notice of intention to terminate, after which time the said rights, benefits and privileges in and with respect to the said additional territory shall altogether cease and determine, and, at all events, this agreement shall terminate automatically and simultaneously when the aforesaid "Manufacturer's Contract", executed on the 1st day of September, 1936, is terminated.

2. All of the duties, obligations, and liabilities imposed upon and assumed by Manufacturer by the aforesaid contract for the territory originally granted, are hereby extended, imposed upon, and assumed by Manufacturer with-in and with respect to the above described additional territory, with the same force and effect henceforth as if said additional territory had been originally included in said contract, for the same period of time as Manufacturer is permitted by Sealy to exercise the hereinbefore referred to rights, benefits, and privileges under the terms of paragraph 1 thereof, or until the aforesaid "Manufacturer's Contract" is terminated, whichever is the sooner, but any liability accrued at the time of termination shall remain in full force and effect.

3. No additional "Minimum consideration" over that required by paragraph 22 of said "Manufacturer's Contract" shall be payable by Manufacturer because of the additional population contained within said new temporary territory.

[fol. 1128E] 4. This contract shall become binding and effective from the date of its execution by the parties hereto.

5. This contract is executed in duplicate.

In Witness Whereof, the parties by their duly authorized officers or agents, have caused this agreement to be executed, intending to be legally bound hereby, the day and year first above written.

Sealy, Incorporated, By H. E. Wolf, President.

Attest:

R. G. Culp, Assistant Secretary.

The Ohio Mattress Co. (Seal). By Frank Wuliger,
Treas.

Witness:

E. H. Bergmann.

[fol. 1129E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1014

MANUFACTURER'S CONTRACT

This Contract, made at Chicago, in the State of Illinois, this 1st day of May, 1941, by Sealy, Incorporated, a Delaware corporation, hereinafter called "SEALY", and *Made-Wel Bedding Co. Morris Lewis & Samuel Hertz—Proprietors a New Jersey* (Corporation, Partnership, etc.) having a regular place of business at 43 Aspen St. Passaic, New Jersey hereinafter called "Manufacturer":

Witnesseth:

Whereas: Sealy has certain trade-marks, trade names, copyrights, methods, processes, specifications, and good will, which are of distinct value in the manufacture and sale of mattresses, studio couches, sofa beds, bed springs, advertising, merchandising and general cooperative effort bedding and similar products; and is engaged in national in the manufacturing and sale of Sealy products; and

Whereas: Manufacturer desires to manufacture and sell Sealy Products within an exclusive territory under the terms and conditions hereinafter set forth, and to receive the benefits of use of Sealy's trade names, trade-marks, copyrights, manufacturing processes, national advertising, merchandising and general cooperative effort; and

Whereas: Sealy desires to assign an exclusive territory to Manufacturer and to contract with it, as an independent contractor, to manufacture and sell Sealy Products therein

Now, Therefor, in consideration of the promises and of the mutual agreements herein contained, it is hereby agreed between the parties hereto, as follows:

[fol. 1130E] Definition of Sealy Products

1. As used in this contract the term "Sealy Products" shall mean all mattresses, including ensembles, and studio couches, divans, studio lounge beds, sofa beds, matching chairs for the last four mentioned, bed springs, box springs, box springs, foundation units, pillows, cushions, comforts and similar and related articles manufactured or

to be manufactured and/or sold, bearing or having affixed thereto in any manner Sealy's trade name and trade-mark "Sealy" in any form, any of its other trade-marks, whether registered or not, including, among others, Sealy Rest, Truease, Texlan, Luxel, Sunspun, Durolite, Posture Pillow, Fast Asleep, Sleep Charm, Natural Rest, Air Vent, Sleep Joy, Sealy Kraft, Airlite, and Enchanted Nights.

Right to Manufacture and Sell

2. Manufacturer agrees, as an independent contractor and at its own expense, during the term of this contract, to manufacture Sealy Products within the territory hereinafter defined under and strictly in accordance with Sealy's specifications, patents, processes, exclusive rights, and licenses, now owned or controlled of hereafter owned or controlled by Sealy, and to sell the same within the territory hereinafter defined under Sealy's trade name, trade marks and copyrights.

3. Sealy agrees that Manufacturer may use the word "Sealy" in its corporate or business name but only in connection with the manufacture and sale of Sealy Products and only during the life of and while fully complying with this contract. If such word is used in Manufacturer's corporate or business name, said name shall be placed, by label or otherwise, only on Sealy Products made and sold in accordance with the provisions of this contract, and shall be advertised or otherwise represented only in connection with the manufacture and sale of Sealy Products in accordance with the provisions of this contract. Sealy agrees that Manufacturer may use its patents, copyrights, trade-marks, exclusive rights and licenses in the form and in the manner prescribed by Sealy but only while this contract is in effect and in accordance therewith. On any termination of this contract, Manufacturer agrees that all rights given it by this contract shall terminate that it will forthwith [fol. 1131E] drop the name "Sealy" from its corporate or business name, and that it will not thereafter use or advertise the word "Sealy" or any of the Sealy patents, copyrights, trade-marks, trade names or labels. Manufacturer admits and concedes that Sealy is the full and complete owner, in its own name and right, of the trade name and trade-mark "Sealy" in all forms, of the other trade marks

hereinbefore mentioned, and of the patents, copyrights and exclusive licenses, under and by which Sealy Products have been and are to be manufactured and sold, and disclaim any interest therein and any right thereto to any right to manufacture or sell any of said products except in accordance with this contract.

4. Sealy agrees to use and expend at least one half of the under this contract and similar contracts which Sealy has amounts paid to it as consideration (Paragraph 20 and 21) with its other manufacturers, for national and other advertisements, merchandising and general sales promotion of Sealy Products throughout the United States, it being understood that Sealy's overhead expense, such as salaries, office and administration costs are part of such advertising merchandising and sales promotion above referred to, as well as the time at which expenditures shall be made, shall lie within the discretion of Sealy's Board of Directors or Executive Committee thereof.

5. Manufacturer agrees that, while this contract is in force, all materials, patents, designs, specification, construction, processes, copyrights, trade-marks and trade names, and the right to use same by license or otherwise which are or shall become the property of Sealy or in which Sealy shall have or procure the right of exclusive use, shall be used only in the manufacture and sale of Sealy Products by Manufacturer.

Specifications

6. A true and correct copy of the specifications for the Sealy Products is attached hereto, made part hereof and marked "Exhibit A". Manufacturer agrees to manufacture all Sealy Products strictly in accordance with said specifications. At any time or times the Board of Directors of Sealy, or the Executive Committee thereof, may change said specifications or devise and establish specifications for [fol. 1132E] new or additional Sealy Products. When specifications are thus changed and written notice of such change, together with the copy of the specifications as changed is given to manufacturer, such specifications as changed shall become part of this contract and after thirty days have elapsed after said notice, Manufacturer shall manufacture the particular Sealy Product involved strictly

in accordance with said specifications as changed. No Sealy Products other than those for which specifications are prescribed or approved by Sealy shall be manufactured or sold by Manufacturer. When specifications have been adopted for new or additional Sealy Products, Manufacturer shall manufacture same strictly in accordance with said specifications.

Methods and Processes

7. Sealy agrees to furnish Manufacturer, upon demand, full information concerning its methods and processes, together with technical advice and direction as to the best methods of manufacturing Sealy Products. Manufacturer Agrees to manufacture Sealy Products strictly and faithfully in accordance with the processes, methods, and directions from time furnished by Sealy. Said methods, processes and directions may be changed from time to time by Sealy, or new ones established by the Sealy Board of Directors or the Executive Committee thereof. Said new or changed methods, processes and directions shall become effective as in the case of new or charged specifications.

Supervision by Sealy

8. Sealy shall exercise supervision and control over the Manufacture of all Sealy Products by Manufacturer, so as to insure that said products are made in conformity with Sealy specifications, processes, methods, directions and patents and with the provisions of this contract. To enable Sealy to exercise such supervision and control, Manufacturer will furnish Sealy on demand, specimens of products manufactured under this contract and samples of the material used, and will afford duly accredited representatives, of Sealy access to its factories and warehouses at reasonable times.

[fol. 1133E]

Right to Advertise

9. While this contract is in effect, Manufacturer may advertise Sealy Products by means employing and embodying Sealy's trade names, trade-marks and copyrights. However, Manufacturer will discontinue any advertising of Sealy Products which is objectional to Sealy, on notice by Sealy, and will not repeat such objectional advertising or

advertising similar thereto. Manufacturer agrees not to advertise products other than Sealy or Crestline Products by statements that they are "Made by Makers of Sealy Products" or words of similar import unless specifically authorized by the President of Sealy or its Executive Committee. Manufacturer agrees to use its best efforts to prevent such and other advertising by dealers and other retailers which is objectional to Sealy. If such objection advertising or representation is not discontinued immediately, Manufacturer agrees to discontinue at once the furnishing of any Sealy merchandise to offending party. Manufacturer further agrees not to advertise or represent any product as a Sealy Product unless it is such within the meaning of this contract, and agrees to use its best efforts to prevent any advertisements or representation by dealers or retailers that products are Sealy Products when they are not made in accordance with the provisions of this contract. Manufacturer agrees that he will in no manner trade on the prestige of Sealy or make use of the fact that he is a manufacturer of Sealy merchandise except in the furtherance of Sealy interests. Use of Sealy name, prestige or trademarks into any territory outside of territory covered by this contract shall be considered a breach of contract, and Sealy license as authorized herewith may be terminated by authority of the Executive Committee on written notice.

Patent, Trade-Mark Infringement

10. Sealy agrees to defend, at its expense, any and all suits against Manufacturer for or on account of any alleged infringement while this contract is in force, of any patent, copyright, trade-mark or trade name, resulting from the manufacture or sale by Manufacturer of any [fol. 1134E] of any Sealy Products, if the latter were made strictly pursuant to and in accordance with the provisions of this contract including the Sealy Specifications.

11. Sealy agrees not to sue Manufacturer for infringement of any of its patents, copyrights, trade names, trademarks, methods or processes by reason of any act committed by Manufacturer during the term of this contract, and in accordance and compliance with it.

Territory

12. The exclusive territory hereby allotted to Manufacturer is as follows:

The following territory in the state of New Jersey. Counties—

Essex

Sussex

Passaic

Bergen

Hudson

Morris County

Warren

Hunterdon

Somerset

Middlesex

Union

Monmouth

Mercer

Ocean

The following territory in the State of New York. Counties—

Rockland

Orange

Sullivan

Richmond

It is further understood that the territory above outlined must be worked thoroughly by the Manufacturer in the interest of Sealy. Failure to perform in line with this understanding in any part of the territory causes said part or parts of said territory to revert automatically to Sealy, unless said condition is rectified to the satisfaction of the Executive Committee within thirty (30) days following written notice from Sealy.

[fol. 1135E] Sales in or Shipments into Manufacturer's Territory

13. Sealy will not manufacture or sell, nor will it, without the consent of Manufacturer, contract with or permit any other individual, partnership, association or corporation, to manufacture or sell Sealy Products within the exclusive territory set aside to Manufacturer, so long as this contract is in force. Sealy shall pay to Manufacturer, upon demand, as liquidated damages, \$10.00 for each Sealy Product sold or shipped into Manufacturer's exclusive territory by Sealy, and \$10.00 less the cost of collection of same, for each such article sold or shipped into Manufacturer's exclusive territory by any person, partnership, association

or individual, which has in effect a contract with Sealy, identical or similar to this one: provided, that Sealy has succeeded in collecting the said \$10.00 for each such article from said person partnership, association or corporation. This section does not apply to sale of Furniture Market samples by Sealy, Incorporated.

Restriction Upon Sales by Manufacturer

14. Manufacturer shall not sell, ship or deliver Sealy Products outside its exclusive territory, nor shall it make any sale of Sealy Products, if it knows that the purchaser intends to resell, deliver or ship the same for resale out of said exclusive territory, nor shall it sell, ship or deliver any Sealy products to any mail order house or jobber without Sealy's written consent. For each violation of the next preceding provision, Manufacturer shall pay to Sealy, on demand, the sum of \$10.00 for each Sealy product sold in violation thereof. On notice from Sealy, Manufacturer will promptly discontinue making such sales and/or shipments.

[fol. 1136E] Manufacturer's Good Faith

15. Manufacturer shall not aid, abet or assist any other corporation, partnership or individual to do anything which might in any way constitute a violation of any provision of this contract or an infringement of any of the patents, copyrights, trade-marks and trade-names of Sealy. Manufacturer will not sell or deliver to others, or aid, or assist others in the use of any of the Sealy labels, brands, materials, without the written consent of Sealy. Manufacturer hereby agrees not to manufacture or sell, directly or indirectly, any mattress, studio couch, box spring, pillow, cushion, sofa bed, or other product which is of a kind or bears the label, trade-mark or trade name which is nationally advertised in competition with Sealy Products.

Inferior Products

16. Manufacturer will manufacture and sell Sealy Products strictly in accordance with this contract, and will pay to Sealy, on request, the full retail price of any Sealy Products sold by it to any purchaser, on the production of evidence that said product was not made in accordance with

this contract, or that it was mislabeled or misbranded, or that, in the manufacture of it, inferior materials or workmanship were used, so that Sealy may replace any such product, which Sealy engages to do upon payment as aforesaid.

Price Control by Sealy

17. Sealy and Manufacturer believe that the good will of Sealy Products will be seriously damaged and the quality standard thereof endangered if they are sold at cut retail prices. Manufacturer, therefore, agrees to contract, orally or in writing, with each retailer to whom it sells Sealy Products that such retailer shall not resell the same at prices less than the minimum retail prices therefor that may be established by Sealy, from time to time, provided such contracting be not contrary to any State or Federal law governing the particular contract. Manufacturer agrees to use all legal and equitable remedies open to it to enforce such contracts.

[fol. 1137E] Records and Reports of Manufacturers

18. Manufacturer shall keep detailed, accurate and complete records and accounts of all Sealy Products made by it during each month and shall give to Sealy or its authorized representatives free access to all of said records and accounts and the right to audit and make copies of the statements from said records and accounts, at any and all reasonable times, Manufacturer agrees to make up and sent to Sealy, on or before the 15th day of each month, a true and complete report of all of said products made by it during the preceding month or portion thereof if this contract was not in effect for the whole month.

19. No Sealy Product shall be sold by Manufacturer without having affixed to it the copyrighted or other label designated therefore by Sealy. Neither the name Sealy nor any Sealy Trade-mark or trade name shall be affixed to a Sealy Product or appear thereon other than by copyrighted Sealy label or in such other manner as Sealy shall prescribe. All Sealy labels shall be in the form prescribed by Sealy, and Manufacturer shall not attach or affix a label containing the name "Sealy" in any form, or any other trade-mark or trade-name owned by Sealy to a product

other than one manufactured strictly pursuant to and in accordance with this contract, nor shall Manufacturer in any other way represent that a product not made strictly pursuant to and in accordance with this contract, is a Sealy Product, or that a product not bearing the Sealy label prescribed therefor by Sealy, is a Sealy Product. Manufacturer shall place and use said labels with respect to Sealy Products as directed by Sealy. This license shall be effective so long as this contract is in force and effect and shall terminate when this contract is terminated. The titles of the labels which are the subject of this license are:

[fol. 1138] For Mattresses:

Sealy Rest Tuftload—Truonso—Super Rest—Natural Rest Airvent—Enchanted Nights—Tuftless—Sunspun—Sleep Ensemble Mattress Unit—Sleep Charm—Airlite Mattress Unit—and Super Sleep Ensemble Mattress Unit, and any other names hereinafter recorded as Sealy trade names for Sealy Products.

For Upholstered Box Springs:

Sealy Rest, Truonse—Super Rest—Natural Rest—Airvent Enchanted Nights—Sleep Charm—Sunspun—Tuftless—Airlite Foundation—Sleep Ensemble Foundation Unit—Super Sleep Ensemble Ensemble Foundation Unit, etc.

Sealy may require other or supplementary labels to be placed on Sealy Products, and shall have the right to prescribe the form thereof, the position in which the same shall be placed on the product, and also the name of the person or company to furnish the same to Manufacturer.

All Sealy labels shall be obtained by Manufacturer IN the following manner and not otherwise:

Sealy will designate a person or company to furnish Sealy labels to Manufacturer. Manufacturer desiring labels shall send to Sealy a regular duly executed order on the said designated label manufacturer or distributor for the amount and kind of labels desired, together with a check to the order of Sealy in an amount equal to the total of the sums required to be paid for said labels ordered under the terms of of Paragraph 20 hereof. When those conditions

are complied with, Sealy will promptly transmit the order to the designated label manufacturer or distributor. Manufacturer specifically agrees that it will neither order Sealy labels directly from the designated label manufacturer or distributor, nor obtain Sealy labels in any manner whatsoever other than that herein prescribed.

[fol. 1139E] 20. Sealy shall fix, for the purpose of this Paragraph the wholesale price applicable to each Sealy Product, and Manufacturer shall pay to Sealy, by the procedure prescribed in Paragraph 19 hereof, as consideration under this contract, the following amounts for Sealy labels ordered under provisions of said Paragraph 19:

Labels for mattresses or upholstered box springs falling within the following wholesale price classification established by Sealy:

Class I	at \$11.00 or less	25¢ each
Class II	from \$11.01 to \$13.00	35¢ "
Class III	" 13.01 to 15.50	50¢ "
Class IV	" 15.51 to 17.75	75¢ "
Class V	" 17.76 to 23.50	\$1.00 "
Class VI	" 23.51 to 28.75	1.50 "
Class VII	" 28.76 to 35.75	2.00 "
Class VIII	" 35.76 to 47.50	3.00 "
Class IX	" 47.51 and up	5.00 "

Hotel Special Model A. priced by Sealy at wholesale
at \$19.75..... 50¢ each

Hotel Special Model B. priced by Sealy at wholesale
at \$16.75..... 35¢ each

Little Darling Crib Mattress, priced by Sealy at wholesale
at \$3.75..... 10¢ each

Labels for Crestline mattresses and box springs falling within the following wholesale price classifications established by Sealy:

Class A.	from \$ 7.51 to \$ 8.50	10¢ each
Class B.	" 8.61 to 9.50	15¢ "
Class C.	" 9.51 to 10.50	15¢ "
Class D.	" 10.51 to 11.00	20¢ "
Class E.	" 11.01 to 13.00	20¢ "
Class F.	" 13.01 to 15.50	20¢ "
Class G.	" 15.51 to 17.75	25¢ "
Class H.	" 17.76 to 23.50	25¢ "

Labels for Promotional mattresses and box springs falling within the following wholesale price classifications established by Sealy:

Class I	at	\$11.00 or less	25¢ each
Class II	from	11.01 to \$13.00	35¢ "
Class III	"	13.01 to 15.50	50¢ "
Class IV	"	15.51 to 17.75	75¢ "
Class V	"	17.76 to 23.50	1.00 "
Class VI	"	23.51 to 28.75	1.50 "
Class VII	"	28.76 to 35.75	2.00 "
Class VIII	"	35.76 to 47.50	3.00 "
Class IX	"	47.51 up	5.00 "

Labels for Promotional mattresses and box springs falling within the following wholesale price classifications established by Sealy:

[fol. 1140E] Labels for standard studio couches falling within the following wholesale price classifications established by Sealy:

Class I	at	\$24.50 or less	25¢ each
Class II	from	24.51 to \$29.50	50¢ "
Class III	"	29.51 to 39.50	75¢ "
Class IV	"	39.51 to 49.50	1.00 "
Class V	"	49.51 and up	1.50 "

Labels for Crestline studio couches falling within the following wholesale price classifications established by Sealy:

Class A.	at	\$24.50 or less	25¢ each
Class B.	"	24.51 to \$28.50	50¢ "
Class C.	"	29.51 to 39.50	75¢ "
Class D.	"	39.51 to 49.50	1.00 "
Class E.	"	49.51 and up	1.50 "

Labels for Promotional Studio divans falling within the following wholesale price classifications established by Sealy:

Class I	at	\$24.50 or less	25¢ each
Class II	from	24.51 to \$29.50	50¢ "
Class III	"	29.51 to 39.50	75¢ "
Class IV	"	39.51 to 49.50	\$1.00 "
Class V	"	49.51 and up	1.50 "

Until further notice the Royalty on all Studio Couches is to be reduced to 20¢ per studio. The Corporation reserves the right to reinstate the contractual basis when desired.

For labels on any products not herein specified Sealy shall have the right to set the consideration per label to be paid by Manufacturer.

Minimum Consideration

21. (a) As consideration to Sealy under this contract Manufacturer agrees to pay Sealy while this contract is in effect, through payments on labels as provided in Paragraph 19 and 20 thereof, a Royalty consideration of \$ (Grace) per month in advance, for the first three (3) months immediately following the effective date of this contract: \$150.00 per month, in advance for the next three months: \$150.00 per month, in advance, for the next six (6) months. Thereafter for the duration of this contract he shall pay to Sealy a monthly royalty of 2% on his Gross Sales after deduction of goods sold to bona fide jobbers and mail order houses approved by Sealy. Such Royalty, however, in no case to be

[fol. 1141E] less than \$150.00 per month, payable on or before the 15th day of the month following when said sales were effected by Manufacturer. In the Event This Contract is terminated other than at the end of a month a proportionate part of the minimum monthly average shall be due for the portion of the month already elapsed. At the end of one (1) year from *August 1st 1941*, if Manufacturer's payments to Sealy under Paragraph 19 and 20 hereof exceed the product of the monthly minimum multiplied by 12, there shall be no credit carried over to a succeeding year on the minimum required for that year. When this contract is terminated at the end of three (3) years or otherwise, any excess over the minimum average shall not be a credit or a claim against Sealy in favor of Manufacturer. It is understood and agreed that all payments on labels made to Sealy under the provisions of Paragraph 19 and 20 by Manufacturer prior to *August 1st 1941*, shall be credited as if made between *August 1st 1941*, and *August 1st 1942*.

21. (b) Manufacturer agrees to pay for all advertising materials and other articles furnished by Sealy or by duly authorized sources designated by Sealy. It is further understood and agreed that Sealy may ship such advertising or other materials as it deems necessary for the presentation and welfare of its business, and such items so shipped shall be paid for by Manufacturer within thirty (30) days from the date of shipment. Any failure to pay shall constitute a breach of contract by Manufacturer.

Option in Sealy to Buy Labels

22. On any termination of this contract, Sealy shall have an option for a period of thirty (30) days from such termination to buy from Manufacturer all or any part of the Sealy labels referred to in this contract, which labels Manufacturer has on hand at that time and not already placed on Sealy Products. Payment for any labels by Sealy to Manufacturer is to be made on the basis of prices which Manufacturer actually paid the label manufacturer for the same.

[fol. 1142E] Automatic Termination of Contract

23. In the event the Manufacturer becomes insolvent, files a petition in bankruptcy, is petitioned against in bankruptcy, files or suffers to be filed proceedings for reorganization or adjustments with creditors and other under the Bankruptcy Acts of the United States, suffers a receiver to be appointed, assigns its assets for the benefit of creditors, suspends business or dissolves, then automatically and simultaneously this contract shall terminate.

Termination

24. In the event either party defaults under or breaches any of the provisions of this contract, then the other may give fifteen (15) days notice to it of intention to terminate this contract unless the said default or breach is made up or remedied in full within said time. If the said default or breach is not made up or remedied within said time, then said party may notify the other that it has terminated this contract, and the same shall as of the date of receipt of said last notice, be terminated. Manufacturer may terminate this contract after giving Sealy six (6) months' notice of intention so to terminate. Such notice once given shall be irrevocable, and this contract shall terminate at the end of said six (6) months without further action by either party.

Termination no Release from Obligations already Accrued

25. No termination of this contract shall release either party from any obligation on its part which has accrued up to the time of said termination. Failure of Sealy to notify Manufacturer of any breach of this contract, or any default

under it, shall not constitute a waiver of any such breach or default, or a waiver of the right of Sealy to terminate this contract at a later date on account thereof, or on account of any other subsequent breach or default.

[fol. 1143E] Assignment of Rights under This Contract

26. This contract is personal with Manufacturer, and Manufacturer shall not have the power to assign or transfer its rights, in whole or in part, within the whole or any part of the territory herein granted, nor shall this contract be assignable or transferable in whole or in part by operation of law.

Manufacturer Not Sealy's Agent

27. Manufacturer shall have no authority to bind Sealy upon any contract or obligation whatsoever. Nothing in this contract shall be construed as constituting Manufacturer an agent of Sealy for any purpose. Sealy shall not be liable for any acts or omissions of Manufacturer, for any unsatisfactory merchandise made or sold by Manufacturer, or for any misrepresentations, made by Manufacturer (except as the same may be elsewhere herein expressly provided for.)

Notices

28. All notices provided for or to be given under this contract shall be in writing.

29. This contract shall be deemed separable and if any portion thereof shall be held invalid for any reason, the remainder shall not thereby invalidated but shall remain in full force and effect.

Effective Date

30. This contract is executed in duplicate.

31. This contract shall not become binding or effective until a copy thereof, executed by Manufacturer shall be delivered by Manufacturer to Sealy at Chicago, Illinois. The date stated at the beginning of this contract shall be prima facie evidence of the date of delivery to Sealy. This contract shall remain in force and effect, unless sooner terminated under the terms of Paragraph 23 or 24 thereof, until *August 1st 1944.*

[fol. 1144E] In Witness Whereof, the parties by their duly authorized officers or agents, have caused this contract to be executed, in duplicate, intending to be legally bound thereby, the day and year first above written.

Sealy, Incorporated, By President, Jacob R. Haas
(Signed.)

Attest:

—, —.

Made-Wel Bedding Co., Morris Lewis & Samuel
Hertz, (Proprietors.)

Morris Lewis (Signed), Samuel Hertz (Signed.)

Witness:

—, —.

Harry Kaplin (Signed)

[fol. 1145E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1015

Reading

This is to certify that the attached are true and correct copies of Sealy, Inc. Manufacturer's Contract of August 1st, 1938.

The Fred G. Hodges Bedding Company, Theo C.
Engelhardt, Treas.

[fol. 1146E] MANUFACTURER'S CONTRACT

This Contract, made at Pittsburgh, in the State of Pennsylvania, this 1st day of August, 1938, by Sealy, Incorporated, a Delaware corporation, hereinafter called "Sealy," and The Fred G. Hodges Bedding Company, a Pennsylvania corporation, having a regular place of business at Reading, in the State of Pennsylvania, hereinafter called "Manufacturer,"

Witnesseth:

Whereas, Sealy has certain trade-marks, trade names, copyrights, methods, processes, specifications, and good will which are of distinct value in the manufacture and sale of mattresses, studio couches, sofa beds, bed springs, bedding and similar products; and is engaged in national advertising, merchandising and general cooperative effort in the sale of Sealy Products; and

Whereas: Manufacturer desires to manufacture and sell Sealy Products within an exclusive territory under the terms and conditions hereinafter set forth, and to receive the benefits of Sealy's national advertising, merchandising and general cooperative effort; and

Whereas: Sealy desires to assign an exclusive territory to Manufacturer and to contract with it, as an independent contractor, to manufacture and sell Sealy Products therein,

Now, Therefore, in consideration of the premises and of the mutual agreements herein contained, it is hereby agreed between the parties as follows:

[fol. 1147E] 1. As used in this contract the term "Sealy Products" shall mean all mattresses, studio couches, bed springs, box springs, sofa beds, pillows and cushions manufactured or to be manufactured and/or sold, bearing or having affixed thereto in any manner Sealy's trade name and trade-mark "Sealy" in any form, any of its other trade-marks, now or later registered, including Airlite, Sealy Rest, Truease, Texlan, Posture Pillow, Luxel, Sunspun and Durolife, or any of its labels, and shall mean all of the aforesaid named products in the construction or manufacture of which any of Sealy's patents are used, or in which any material is used which Sealy now or later

has the exclusive right to use or authorize the use, including the product "Nukraft", a product of the B. F. Goodrich Rubber Company.

2. Manufacturer agrees, as an independent contractor and at its own expense, during the term of this contract, to manufacture Sealy Products to-wit: Mattresses, studio couches, bed springs, sofa beds, pillows and cushions, and will do so within the territory hereinafter defined, under and strictly in accordance with Sealy's patents, methods, processes, exclusive rights, licenses, and specifications, now owned or controlled or hereafter acquired or controlled by Sealy, and sell the same within the territory hereinafter defined, under Sealy's trade name, trade-marks, and copyrights. No Sealy Products other than those for which specifications are prescribed or approved by Sealy shall be manufactured and/or sold by Manufacturer.

3. Sealy agrees that Manufacturer may use the word "Sealy" in its corporate or business name and as a trade-mark or trade name, in the form prescribed by Sealy, on all Sealy Products made by it during, but only during, the life of and while fully complying with this contract. Sealy agrees that Manufacturer may use its patents, copyrights, trade-marks, exclusive rights and licenses but only during the life of and while fully complying with this [fol. 1148E] contract. On any termination of this contract all rights given to Manufacturer hereunder shall cease, and Manufacturer shall forthwith drop the name "Sealy" from its corporate or business name and from its products, and shall not thereafter use the word "Sealy" or any of Sealy's patents, copyrights, trade names, trade-marks, labels or exclusive licenses. Manufacturer admits and concedes that Sealy is the full and complete owner, in its own name and right, of the patents copyrights, trade-marks, trade names and exclusive licenses, under and by which Sealy Products have been and are to be manufactured and/or sold, and disclaims any interest therein and any right thereto or any right to manufacture and/or sell any of said products except in accordance with this contract.

4. Sealy agrees to use at least one-half of the amounts paid to it as label revenue (par. 20) and minimum consideration (par. 21) under this contract and similar contracts which Sealy has with its other Manufacturers, for

national and other advertisement, merchandising and general sales promotion of Sealy Products throughout the United States, it being understood that Sealy's overhead expense such as salaries, office and administration costs are part of such advertising, merchandising and sales promotion expense. The determination of the nature of the advertising, merchandising and sales promotion above referred to as well as the time at or during which the expenditures shall be made shall lie, within the limits hereinafter stated, in the discretion of Sealy's Board of Directors or Executive Committee thereof. However, Sealy agrees to expend the aforesaid one-half for the purposes aforesaid within at least six months following the end of any three month period (while this contract is in effect) for which said income is computed for the purposes of this paragraph. Manufacturer, as a stockholder of Sealy, hereby agrees that Sealy may use and apply as great proportion of its income in excess of said one-half as its Board of Directors or Executive Committee thereof deems advisable for said purposes.

[fol. 1149E] 5. Manufacturer agrees that all materials, patents, designs, specifications, copyrights, processes, trademarks, trade names and/or methods and/or the right to use the same, that are or shall become exclusive to or the property of Sealy or which Sealy controls or has interest in, now or in the future, while this contract is in force, shall be used only in the manufacture and sale of Sealy Products by Manufacturer.

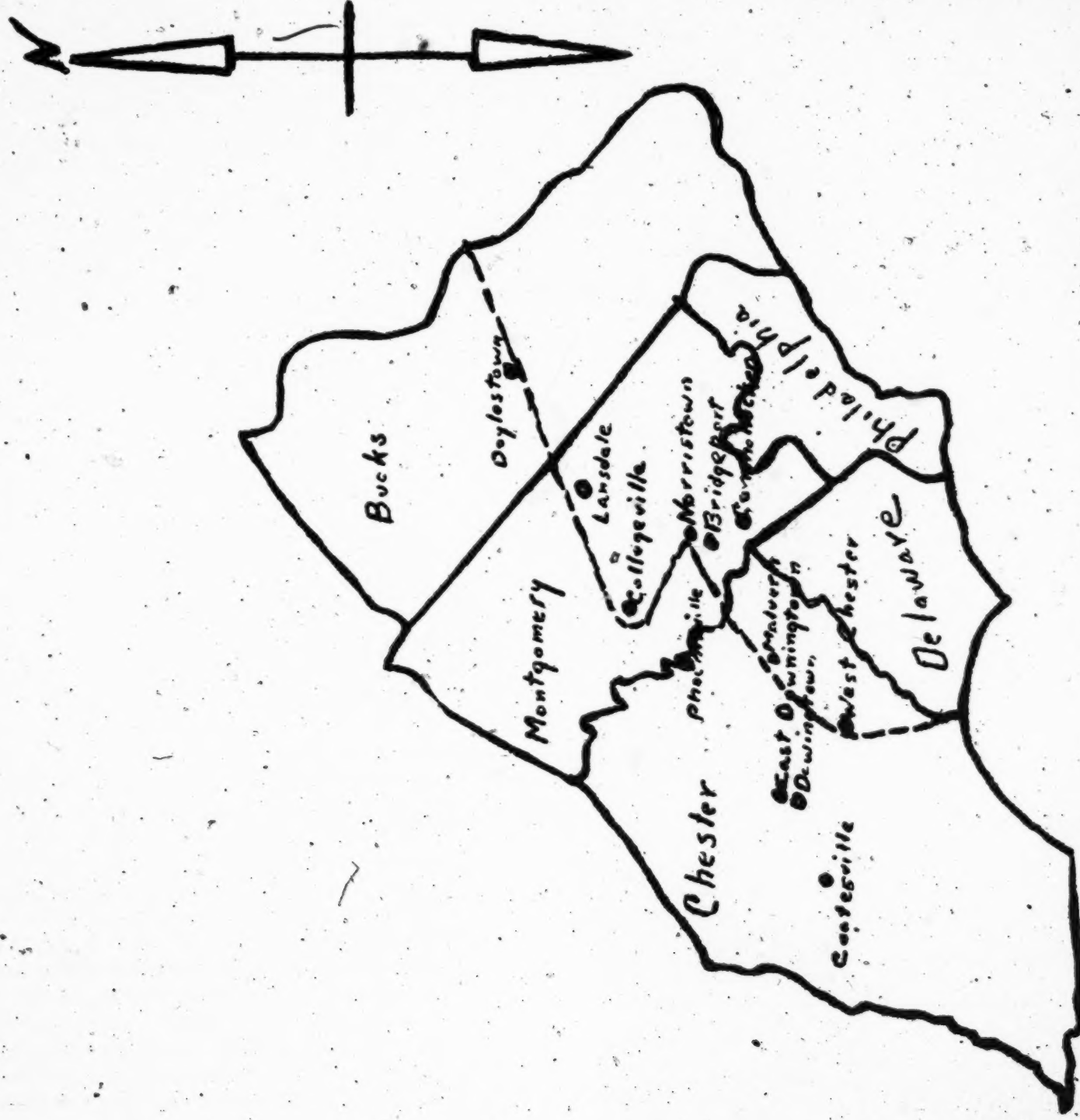
6. A true and correct copy of the specifications of Sealy Products is attached hereto, made a part hereof and marked "Exhibit A". Manufacturer agrees to manufacture all Sealy Products strictly in accordance with said specifications. At any time or times the Board of Directors of Sealy, or the Executive Committee thereof, may change said specifications and/or promulgate specifications for additional Sealy Products. When new specifications are thus prepared or the specifications are thus changed for any Sealy Product and written notice thereof with a copy thereof is given to Manufacturer, such new or changed specifications shall become a part of this contract, and after 30 days have elapsed after said notice Manufacturer

shall manufacture each Sealy Product strictly in accordance with said new or changed specifications.

7. Sealy agrees to furnish Manufacturer, upon demand, full information concerning its methods and processes, together with technical advice and directions as to the best methods of manufacturing Sealy Products. Manufacturer agrees to manufacture Sealy Products strictly and faithfully in accordance with the processes, methods, and directions from time to time furnished by Sealy. Said methods, processes and directions may be changed from time to time by Sealy or new ones promulgated by the Sealy Board of Directors or the Executive Committee thereof. Said new or changed methods, processes and directions shall become effective as in the case of new or changed specifications.

8. Sealy shall exercise supervision and control over the manufacture of all Sealy Products by Manufacturer so as to insure that said products are made in conformity with [fol. 1150E] Sealy specifications, processes, methods, directions and patents and with the provisions of this contract. To enable Sealy to exercise such supervision and control, Manufacturer will furnish Sealy, or demand, specimens of

.



READING: All that section North and West of boundary shown, including Coatesville, Downingtown, Phoenixville, Doylestown.

PHILADELPHIA: All that section South and East of boundary line, including West Chester, Malvern, Norristown, Collegeville, Lansdale.

[fol. 1151E] 13. Sealy will not manufacture nor sell, nor will it, without consent of Manufacturer, contract with or permit any other individual, partnership, association or corporation, to manufacture or sell Sealy Products within the exclusive territory above set aside to Manufacturer, so long as this contract is in force. Sealy shall pay to Manufacturer, upon demand as liquidated damage \$10.00 for each Sealy Product sold or shipped into Manufacturer's exclusive territory by Sealy and \$10.00 less the cost of collection of the same, for each such article sold or shipped into Manufacturer's exclusive territory by any person, partnership, association or individual, which has in effect a contract with Sealy, identical or similar to this one; provided that Sealy has succeeded in collecting the same \$10.00 for each such article from said person, partnership, association or corporation.

14. Manufacturer shall not sell, ship or deliver Sealy Products outside of its exclusive territory, nor shall it make any sale of Sealy Products, if it has reasonable cause to believe that the purchaser intends to resell, deliver or ship the same for resale out of said exclusive territory, nor shall it sell, ship or deliver any Sealy Products to any mail order house, without Sealy's written consent. For each violation of any of the provisions of this paragraph, [fol. 1152E] Manufacturer shall pay to Sealy, upon demand, the sum of \$10.00 for each Sealy Product sold in violation thereof. On notice from Sealy, Manufacturer will promptly discontinue making such sales and/or shipments.

15. Manufacturer shall not aid, abet or assist any other corporation, partnership, or individual to do anything which might in any way constitute a violation of any provision of this contract or an infringement of any of the patents, copyrights, trade-marks and trade names of Sealy. Manufacturer will not sell or deliver to others, or aid, or assist others in the use of, any of the Sealy Labels, brands, or materials without the written consent of Sealy. Manufacturer hereby agrees not to manufacture or sell, directly or indirectly, any mattress, studio couch, box spring, pillow, cushion, sofa bed, or other product which is of a kind or bears a label, trade name or trade-mark which is nationally advertised, or nearly so, in competition with Sealy Products.

16. Manufacturer will manufacture and sell Sealy Prod-

ucts strictly in accordance with this contract and will pay to Sealy, on request, the full retail price of any Sealy Product, sold by it to any purchaser, on the production of evidence that said product was not made in accordance with this contract, or that it was mislabeled or misbranded, or that, in the manufacture of it, inferior materials or workmanship were used, so that Sealy may replace any such product, which Sealy engages to do upon payment as aforesaid.

17. Sealy and Manufacturer believe that the good will of Sealy Products will be seriously damaged if they are sold at cut retail prices. Manufacturer, therefore, agrees to [fol. 1153E] contract, orally or in writing, with each retailer to whom it sells Sealy Products that such retailer shall not resell the same at prices less than the minimum retail prices therefore fixed by Sealy, provided such contracting be not contrary to any State or Federal law governing the particular contract. Manufacturer agrees to use all legal and equitable remedies open to it to enforce such contracts.

18. Manufacturer shall keep detailed, accurate, and complete records and accounts of all Sealy Products made in its territory during each month under this contract, and shall give to Sealy or its authorized representatives free access to all of said records and accounts and the right to audit and make copies of and statements from said records and accounts, at any and all reasonable times. Manufacturer shall make up and send to Sealy, on or before the fifteenth (15th) day of each month, a true and complete report of all of said products made in its territory during the preceding month.

19. No Sealy Product shall be sold by Manufacturer without having affixed to it the copyrighted or other label designated therefor by Sealy. Neither the Sealy name nor any Sealy trade-mark or trade name shall be affixed to a Sealy Product or appear thereon other than by a copyrighted Sealy label or in such other manner as Sealy shall prescribe. All Sealy labels shall be in the form prescribed by Sealy, and Manufacturer shall not attach or affix a label, copyrighted or otherwise, containing the name "Sealy" or any Sealy trade-mark or trade name to a product other than one manufactured strictly pursuant to and in accordance with this contract, nor shall Manufacturer in any other

way represent that a product not made strictly pursuant to [fol. 1154E] and in accordance with this contract, is a Sealy Product.

Sealy hereby licenses Manufacturer to have copies made of the labels copyrighted by Sealy and to obtain the same, but only in the manner and according to the procedure hereinafter provided for, and to use the same. Manufacturer shall place and use said labels with respect to Sealy Products as directed by Sealy, and none shall be placed on or used in connection with any product not made strictly pursuant to and in accordance with this contract. This license shall be effective so long as this contract is in force and effect, and shall terminate when this contract is terminated. The titles of the labels which are the subject of this license are:

For Mattresses:

Sealyrest, Tuftless, Truease, Super Rest, Natural Rest, Airvent, Enchanted Nights, Tuftless, Sunspun, Sleep Ensemble Mattress Unit, Sleep Charm, Airlite Mattress Unit, Super Sleep Ensemble Mattress Unit.

For Upholstered Box Springs:

Sealyrest, Truease, Super Rest, Natural Rest, Airvent, Enchanted Nights, Sleep Charm, Sunspun, Tuftless, Air-lite Foundation Unit, Sleep Ensemble Foundation Unit, Super Sleep Ensemble Foundation Unit.

Sealy may require other and additional labels to be placed on Sealy Products and shall have the right to prescribe the form thereof, the position in which the same shall be placed on the product, and also the person or company to furnish the same to Manufacturer.

All Sealy labels shall be obtained by Manufacturer in the following manner and not otherwise:

Sealy will designate a person or company to furnish Sealy labels to Manufacturer. Manufacturer desiring labels, [fol. 1155E] shall send to Sealy, in duplicate, a regular duly executed order on the said designated label manufacturer or distributor, for the amount and kind of labels desired,

together with a check to the order of Sealy in an amount equal to the total of the sums required to be paid for said labels ordered under the terms of paragraph 20 hereof. When these conditions are complied with, Sealy will promptly transmit the original order to the designated label manufacturer or distributor for fulfillment. Manufacturer will then pay the cost of the labels direct to the label manufacturer or distributor. Manufacturer specifically agrees that it will neither order Sealy labels directly from the designated label manufacturer or distributor, nor obtain Sealy labels in any manner whatsoever other than that herein prescribed.

Manufacturer's order for any Sealy labels under this paragraph shall be for a quantity of not less than 25 labels of the particular class ordered, as the same are classified in paragraph 20 hereof, and if labels of more than one class are ordered, the order shall be for a minimum of 25 labels of each class of labels ordered.

20. Sealy shall fix, for the purpose of this paragraph, the wholesale price applicable to each Sealy Product, and Manufacturer shall pay to Sealy, by the procedure prescribed in paragraph 19 hereof, as consideration under this contract, the following amounts for Sealy labels ordered under the provisions of said paragraph 19:

Labels for mattresses or upholstered box springs falling within the following wholesale price classification established [fol. 1156E] listed by Sealy:

Class I	at \$11.00 or less.....	25¢ each
Class II	from \$11.01 to \$13.00.....	35¢ "
Class III	" \$13.01 to \$15.50.....	50¢ "
Class IV	" \$15.51 to \$17.75.....	75¢ "
Class V	" \$17.76 to \$23.50.....	\$1.00 "
Class VI	" \$23.51 to \$28.75.....	\$1.50 "
Class VII	" \$28.76 to \$35.75.....	\$2.00 "
Class VIII	" \$35.76 to \$47.50.....	\$3.00 "
Class IX	" \$47.51 and up.....	\$5.00 "

Hotel Special Model A, priced by Sealy at wholesale
at \$19.75..... .50¢ each

Hotel Special Model B, priced by Sealy at wholesale
at \$13.75..... .35¢ each

Little Darling Crib Mattress, priced by Sealy at wholesale
at \$3.75..... .10¢ each

Labels for Crestline Mattresses and Box Springs falling within the following wholesale price classifications established by Sealy:

Class A	from \$ 7.51 to \$ 8.50.....	10¢ each
Class B	" \$ 8.51 to \$ 9.50.....	15¢ "
Class C	" \$ 9.51 to \$10.50.....	20¢ "
Class D	" \$10.51 to \$11.50.....	25¢ "
Class E	" \$11.51 to \$13.75.....	35¢ "
Class F	" \$13.76 to \$15.50.....	50¢ "
Class G	" \$15.51 to \$17.75.....	75¢ "
Class H	" \$17.76 to \$23.50.....	1.00 "
Class J	" \$23.51 and up.....	1.50 "

Labels for Promotional Mattresses and Box Springs falling within the following wholesale price classifications established by Sealy:

Class I	at \$11.00 or less.....	25¢ each
Class II	from \$11.01 to \$13.00.....	35¢ "
Class III	" \$13.01 to \$15.50.....	50¢ "
Class IV	" \$15.51 to \$17.75.....	75¢ "
Class V	" \$17.76 to \$23.50.....	1.00 "
Class VI	" \$23.51 to \$28.75.....	1.50 "
Class VII	" \$28.76 to \$35.75.....	2.00 "
Class VIII	" \$35.76 to \$47.50.....	3.00 "
Class IX	" \$47.50 and up.....	5.00 "

Labels for Standard Studio Couches falling within the [fol. 1157E] following wholesale price classifications established by Sealy:

Class I	at \$24.50 or less.....	25¢ each
Class II	from \$24.51 to \$29.50.....	50¢ "
Class III	" \$29.51 to \$39.50.....	75¢ "
Class IV	" \$39.51 to \$49.50.....	1.00 "
Class V	" \$49.51 and up.....	1.50 "

Labels for Crestline Studio Divans falling within the following wholesale price classifications established by Sealy:

Class A	at \$24.50 or less.....	25¢ each
Class B	from \$24.51 to \$29.50.....	50¢ "
Class C	" \$29.51 to \$39.50.....	75¢ "
Class D	" \$39.51 to \$49.50.....	1.00 "
Class E	" \$49.51 and up.....	1.50 "

Labels for Promotional Studio Divans falling within the following wholesale price classifications established by Sealy:

Class I	at \$24.50 or less.....	25¢ each
Class II	from \$24.51 to \$29.50.....	50¢ "
Class III	" \$29.51 to \$39.50.....	75¢ "
Class IV	" \$39.51 to \$49.50.....	1.00 "
Class V	" \$49.51 and up.....	1.50 "

For labels on any products not herein specified, Sealy shall have the right to set the consideration per label to be paid by Manufacturer.

21. (a) Manufacturer agrees to pay to Sealy for Each month during which this contract is in effect, a minimum consideration of \$100.00 per month for the 22 months immediately following the effective date of this contract.

(b) The aforesaid minimum consideration per month shall be reduced by the amount paid for labels during the particular month at the rates and under the terms of paragraph 20 hereof, and if the amount so paid for labels exceeds the minimum consideration, no minimum shall be due and payable for said month.

(c) Not later than the fifteenth day immediately following the end of one month after the effective date of this contract, and not later than the fifteenth day immediately following the end of each and every such month thereafter, Manufacturer shall pay to Sealy the amounts becoming due and payable under this paragraph. However, at the end of each six months following the effective date of this contract, or at the end of any lesser period in the event of a termination of this contract under the provisions hereof, if the amount paid to Sealy by Manufacturer during such period under the terms of paragraph 20 and of this paragraph [fol. 1158E] exceeds the product of the minimum amount payable per month under this contract times the number of months contained in said period, then Manufacturer shall be entitled to a credit in the total amount of any minimum payment or payments made by it under the provisions of Sections (A) or (b) of this paragraph during such period, but not to exceed the difference between the total amount paid under the terms of paragraph 20 and of this paragraph, and the product of the minimum amount payable per month times the number of months contained in said period. This credit shall be applied, in Manufacturer's discretion, either as a credit on future purchases of Sealy labels, or on a minimum payment or payments becoming due and payable thereafter under the terms of this paragraph. In the event this contract is terminated while such credit still stands in favor of Manufacturer, then Sealy shall pay the amount of the same to Manufacturer,

but if there is any indebtedness then owing from the Manufacturer to Sealy, then Sealy shall have the right to apply the said credit to said indebtedness.

(d) Manufacturer agrees to pay for all advertising materials and other articles furnished by Sealy and accepted by Manufacturer at the agreed price, or if there is no agreed price, the reasonable cost thereof within thirty (30) days from the date of delivery of the same, and any failure so to pay shall constitute a breach of this contract by Manufacturer.

22. On any termination of this agreement, Sealy shall have an option for a period of thirty days from such termination to buy from Manufacturer all or any part of the Sealy labels referred to in this contract, which Manufacturer has on hand at that time and not already placed on Sealy Products, at such prices as Manufacturer actually paid the label manufacturer for the same.

23. In the event Manufacturer becomes insolvent, files a petition in bankruptcy, is petitioned against in bankruptcy, files or suffers to be filed proceedings for reorganization under section 77B of the Bankruptcy Act, suspends business, winds up its business, dissolves, suffers a receiver to be appointed or assigns its assets for benefit of creditors, then automatically and simultaneously this contract shall terminate.

24. In the event either party defaults under or breaches any of the provisions of this contract, then the other may [fol. 1159E] give fifteen (15) days notice to it of intention to terminate this contract unless the said default or breach is made up or remedied in full within said time. If the said default or breach is not made up or remedied within said time, then said party may notify the other that it has terminated this contract, and the same shall, as of the date of receipt of said last notice, be terminated. Manufacturer may terminate this contract after six months' notice of intention so to terminate. Such notice once given shall be irrevocable, and this contract shall terminate at the end of said six months without further action by either party. Also, the obligation of Sealy contained in paragraph 27 hereof, may be terminated and cancelled by Sealy, although there has been no breach of this contract by Manufacturer or occurrence of any other conditions under which the same

would be terminated, by giving Manufacturer sixty days' notice of its intention so to terminate and cancel, but such act by Sealy shall not operate to terminate or cancel any of the other provisions of this contract.

25. No termination of this contract shall release either party from any obligation on its part which has accrued up to the time of said termination. Failure of Sealy to Notify Manufacturer of any breach of this contract, or any default under it, shall not constitute a waiver of any such breach or default, or a waiver of the right of Sealy to terminate this contract at a later date on account thereof, or on account of any other subsequent breach or default.

26. Nothing in this contract shall be construed as constituting Manufacturer an agent of Sealy for any purpose. Sealy shall not be liable for any acts or omissions of Manufacturer, except as elsewhere herein may be expressly provided for, for any unsatisfactory merchandise made or sold by Manufacturer, or for any misrepresentations made by Manufacturer.

27. Inasmuch as Manufacturer is required to be a stockholder of Sealy so long as this contract remains in effect, Sealy shall therefore transfer to Manufacturer, subject to all the terms and conditions hereinafter set forth, two (2) shares of Sealy's Treasury Stock upon execution of this contract, one (1) share on the first day of October, 1938, [fol. 1160E] and one (1) share at each interval of sixty days thereafter so long and only so long, however, as this contract is otherwise in force and effect.

28. Sealy shall have a lien upon the shares of its Treasury Stock transferred to Manufacturer pursuant to this contract for any indebtedness which may become due it by Manufacturer, whether said indebtedness be matured or unmatured, already accrued or accruing later and whether it be contractual or otherwise. Said shares shall not be assignable or transferable by Manufacturer or by operation of law so as to impair said lien, and Sealy may refuse to transfer the said shares on its books in order to preserve said lien. Sealy may foreclose and enforce said lien by notifying Manufacturer of the amount of indebtedness existing at the particular time and crediting against the same the sum of Five (\$5.00) Dollars per share for each share then standing in Manufacturer's name on Sealy's books.

Such act by Sealy shall constitute foreclosure of the said lien and revest and retransfer title to said shares in Sealy automatically and without further proceedings, and Sealy shall have all proper methods, legal and equitable, of enforcing the return by Manufacturer of the particular certificates representing the shares transferred under this contract. Manufacturer hereby waives all requirements of public or private sale, notice and other procedure, formalities and requirements for its benefit governing foreclosures or satisfaction of the line hereby created.

29. Manufacturer agrees not to assign, transfer, deliver, pledge, hypothecate or otherwise encumber the shares of stock transferred and delivered by Sealy to Manufacturer under this contract, to any person or entity other than Sealy. Any assignment, transfer, delivery pledge, encumbrance, or hypothecation in violation of this paragraph shall be null and void and Sealy may refuse to recognize any such assignment or transfer on its stock records.

[fol. 1161E] 30. In the event Manufacturer files a petition in bankruptcy, is petitioned against in bankruptcy, files or suffers to be filed proceedings for reorganization under Section 77B or other sections of the Bankruptcy Act and its amendments, suspends business, dissolves, suffers a receiver to be appointed or assigns its assets for benefit of creditors, then automatically and simultaneously all right, title and interest of Manufacturer to the shares transferred and delivered to it by Sealy shall revest and be retransferred and delivered to it by Sealy shall have all proper remedies, legal and equitable, to secure the return of the particular certificates representing the said shares.

31. Manufacturer hereby grants to Sealy an option to purchase from Manufacturer all of the shares of stock transferred and delivered to it by Sealy under this contract, said option to be exercisable by Sealy at any time during a period of thirty (30) days from and after the end of the term of this contract or from and after any prior termination, hereof as provided for herein, at the price of One (\$1.00) Dollar per share. Manufacturer shall properly assign, transfer and deliver all of said stock to Sealy Upon Notice from the Latter of its Election to exercise said option and tender of a certified check payable to the order of Manufacturer for the consideration of One (\$1.00) Dollar

per share. Sealy shall have the right to exercise said option during the aforesaid period following any termination of this contract independently and without regard to any indebtedness or liability from Sealy to Manufacturer which may exist at that time under this contract or otherwise. Sealy shall have all proper remedies, legal or equitable, for specifically recovering the particular certificates representing the shares transferred under this contract to Manufacturer.

[fol. 1162E] 32. Sealy shall place the following notice on each certificate for stock transferred under this contract.

"Shares represented hereby are transferred by Sealy, Inc., 'transferor', to The Fred G. Hodges Bedding Co., 'Transferee' in accordance with the Manufacturer's Contract between the parties, dated August 1, 1938, prohibiting transfer, assignment, delivery, pledge, hypothecation or encumbrance thereof by transferee, giving transferee a lien thereon for the payment of any indebtedness due transferor by transferee providing for simultaneous and automatic revesting and retransferring of title thereof to transferor upon filing of petition in bankruptcy in behalf of or against transferee or proceedings for reorganization of transferee under the Bankruptcy Act, or upon appointment of a receiver, an assignment for benefit of creditors, or suspension of business of transferee, and giving transferor an option to buy said shares for \$1.00 each each exercisable at any time within 30 days after any termination of said Manufacturer's Contract. Transferor and transferee have copies of said Manufacturer's Contract.

33. All notices provided for or to be given under this contract shall be in writing.

34. This contract is personal with Manufacturer, and Manufacturer shall not have the power to assign or transfer [fol. 1163E] its rights in whole or in part, within the whole or any part of the territory herein granted, nor shall this contract be assignable or transferable in whole or in part by operation of law.

35. This contract shall be deemed separable; and if any portion hereof shall be held invalid for any reason, the

remainder shall not thereby invalidated, but shall remain in full force and effect.

36. This contract shall become binding and effective from the date of its execution by the parties hereto, and shall remain in force and effect, unless sooner terminated under the terms of paragraphs 23 or 24 hereof, until May 31, 1940.

In Witness Whereof, the parties by their duly authorized officers or agents, have caused this contract to be executed, in duplicate, intending to be legally bound thereby, the day and year first above written.

Sealy, Incorporated, by H. E. Wolf, President.

Attest:

R. G. Culp, Assistant Secretary.

The Fred G. Hodges Bedding Co. (Seal) by Wm. F. Gring.

Witness:

Theo. C. Engelhardt.

[fol. 1164E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1016

Sealy Contract of Memphis, Tennessee, November 1, 1936

[fol. 1165E] MANUFACTURER'S CONTRACT

This Contract, made at Pittsburgh, in the State of Pennsylvania, this 1st day of November, 1936, by Sealy, Incorporated, a Delaware Corporation, hereinafter called "Sealy", and U. S. Bedding Company, a Georgia corporation, having a regular place of business at Memphis, Shelby County, in the State of Tennessee, hereinafter called "Manufacturer",

Witnesseth:

Whereas: Sealy has certain trade-marks, trade names, copyrights, methods, processes, specifications, and good will, which are of distinct value in the manufacture and sale of mattresses, studio couches, sofa beds, bed springs, bedding and similar products; and is engaged in national advertising, merchandising and general cooperative effort in the sale of Sealy products and

Whereas: Manufacturer desires to manufacture and sell Sealy Products within an exclusive territory under the terms and conditions hereinafter set forth, and to receive the benefits of Sealy's national advertising, merchandising and general cooperative effort; and

Whereas: Sealy desires to assign an exclusive territory to Manufacturer and to contract with it, as an independent contractor, to manufacture and sell Sealy Products therein,

Now, Therefore, in consideration of the premises and of the mutual agreements herein contained, it is hereby agreed between the parties as follows: -

[fol. 1166E] Definition of Sealy Products

1. As used throughout this contract, the term "Sealy Products" shall mean all mattresses, studio couches, bed springs, box springs, sofa beds, pillows and cushions, manufactured, or to be manufactured and/or sold, bearing or having affixed thereto in any manner, the Sealy trade name, and/or trade-marks, and/or labels, or in any other fashion the word and/or name "Sealy".

Right to Manufacture and Sell

2. Manufacturer agrees, as an independent contractor and at its own expense, during the term of this contract,

to manufacture Sealy Products to-wit: Mattresses, studio couches, bed springs, sofa beds, pillows and cushions, and will do so within the territory hereinafter defined, under and strictly in accordance with the Sealy patents, methods, processes, exclusive rights/licenses, and specifications, now owned or controlled or hereafter acquired or controlled by Sealy, and sell the same within the territory hereinafter defined, under the Sealy trade name, trade-marks, and copy-rights. No Sealy Products other than those for which specifications are prescribed or approved by Sealy shall be manufactured and/or sold by Manufacturer.

Use of Trade-Marks, Patents, Licenses

3. Sealy agrees that Manufacturer may use the word "Sealy" in its corporate or business name and as a trade-mark or trade-name, in the form prescribed by Sealy, on all Sealy Products made by it during, but only during, the life of and while fully complying with this contract. Sealy agrees that Manufacturer may use its patents, copyrights, trade-marks, exclusive rights and licenses but only during the life of and while fully complying with this contract. On any termination of this contract all rights given to Manufacturer hereunder shall cease, and Manufacturer shall forthwith drop the name "Sealy" from its corporate or business name and from its products, and shall not thereafter use the word "Sealy" or any of the "Sealy" patents, [fol. 1167E] copyrights, trade-names, trade-marks or labels. Manufacturer admits and concedes that Sealy is the full and complete owner, in its own name and right, of the patents, copyrights, trade-marks and trade names, under and by which Sealy Products have been and are to be manufactured, and disclaims any interest therein and any right thereto or any right to manufacture and/or sell any of said products except in accordance with this contract.

4. Manufacturer also agrees that all materials, patents, designs, specifications, copyrights, processes, trade-marks, trade names and/or methods and/or the right to use the same, that are or shall become exclusive to or the property of Sealy or which Sealy controls or has interest in, now or in the future, while this contract is in force, shall be used only in the manufacture and sale of Sealy Products by Manufacturer.

Specifications

5. A true and correct copy of the specifications of the Sealy Products is attached hereto, made a part hereof and marked "Exhibit A". Manufacturer agrees to manufacture all Sealy Products strictly in accordance with said specifications. At any time or times the Board of Directors of Sealy, or the Executive Committee thereof, may change said specifications and/or promulgate specifications for additional Sealy Products. When new specifications are thus prepared or the specifications are thus changed for any Sealy Product and notice thereof, as defined in this agreement is given to Manufacturer, such new or changed specifications shall become a part of this contract and after 30 days have elapsed after said notice Manufacturer shall manufacture each Sealy Product strictly in accordance with said new or changed specifications.

Methods and Processes

6. Sealy agrees to furnish Manufacturer, upon demand, full information concerning its methods and processes, together with technical advice and directions as to the best methods of manufacturing Sealy Products. Manufacturer agrees to manufacture Sealy Products strictly and faithfully in accordance with the processes, methods, and directions from time to time furnished by Sealy. Said methods, processes and directions may be changed from time to time by Sealy or new ones promulgated by the Sealy Board of Directors or the Executive Committee thereof. Said new or changed methods, processes and directions shall become effective as in the case of new or changed specifications.

Supervision by Sealy

7. Sealy shall exercise supervision and control over the manufacture of all Sealy Products by Manufacturer so as to insure that said products are made in conformity with Sealy specifications, processes, methods, directions and patents and with the provisions of this contract. To enable Sealy to exercise such supervision and control, Manufacturer will furnish Sealy, on demand, specimens of products manufactured under this contract and samples of the ma-

terials used and will afford duly accredited representatives of Sealy access to its factory and warehouses at reasonable times.

Right to Advertise

8. Manufacturer may advertise Sealy Products by means embodying and employing Sealy trade names, trade-marks, and copyrights. However, Manufacturer will discontinue any advertising of Sealy Products which is objectionable to Sealy, on notice by Sealy.

Patent, Trade-Mark Infringement

9. Sealy agrees to defend at its expense any and all suits against Manufacturer for or on account of any alleged infringement, while this contract is in force, of any patent, copyright, trade-mark, or trade name by the manufacture or sale by Manufacturer, in accordance with the provisions [fol. 1169E] of this contract, of any Sealy Products, and to pay any judgments or decrees recovered in law or in equity against Manufacturer upon such claims on any of them.

10. Sealy agrees not to sue Manufacturer for infringement of any of its patents, copyrights, trade-names, trade-marks, methods, or processes by reason of any act committed by Manufacturer during the term of this contract, and in accordance and compliance with it.

Territory

12. The exclusive territory hereby allotted to Manufacturer is as follows:

(1) The states of Tennessee, Arkansas, Louisiana, Mississippi, Alabama, Florida, and Kentucky.

(2) All of Georgia, North Carolina, and South Carolina, provided however, that if an additional Manufacturer is secured by Sealy for the manufacture and sale of Sealy products within the state of Georgia, North Carolina, or South Carolina, on or before August 1, 1939, then the said states of North Carolina, and South Carolina, and all of the state of Georgia north of but not including the counties of Quitman, Randolph, Terrell, Lee, Worth, Turner, Ben Hill, Coffee, Bacon, Pierce, Brantley, and Glynn, shall revert to Sealy so that the same may be granted by Sealy to

such new manufacturer. If such a manufacturer willing to contract for said territory is not obtained on or before August 1, 1939, then all the aforesaid states of North Carolina, South Carolina, and Georgia, shall be and remain subject to this contract.

(3) All that portion of Missouri east of and including: Schuyler, Adair, Macon, Randolph, Boone, Cole, Miller, Pulaski, Texas, and Howell counties.

(4) All that portion of Illinois south of and including: Pike, Scott, Morgan, Sangamon, Christian, Shelby, Cumberland, and Clark counties.

(5) The following counties in Indiana: Knox, Daviess, Martin, Lawrence, Jackson, Jennings, Jefferson, Scott, Washington, Orange, Dubois, Pike, Gibson, Posey, Vanderburgh, Warrick, Spencer, Perry, Crawford, Harrison, Floyd, Clark.

(6) All that portion of Iowa east of and including the following counties: Howard, Chickasaw, Bremer, Buchanan, Linn, Iowa, Keokuk, Wapello, and Davis.

[fol. 1170E] Sales in or Shipments into Manufacturer's Territory

13. Sealy will not manufacture nor sell, nor will it, without consent of Manufacturer, contract with or permit any other individual, partnership, association or corporation, to manufacture or sell Sealy Products within the exclusive territory above set aside to Manufacturer, so long as this contract is in force. Sealy shall pay to Manufacturer, upon demand as liquidated damages, \$10.00 for each Sealy Product sold or shipped into Manufacturer's exclusive territory by Sealy, and \$10.00 less the cost of collection of the same, for each such article sold or shipped into Manufacturer's exclusive territory by any person, partnership, association or individual, which has in effect a contract with Sealy, identical or similar to this one; provided, that Sealy has succeeded in collecting the said \$10.00 for each such article from said person, partnership, association or corporation.

Restriction Upon Sales by Manufacturer

14. Manufacturer shall not sell, ship or deliver Sealy Products outside of its exclusive territory, nor shall it make any sale of Sealy Products, if it knows that the pur-

chaser intends to resell, deliver or ship the same for resale out of said exclusive territory, nor shall it sell, ship or deliver any Sealy Products to any mail order house, without Sealy's written consent. For each violation of the next preceding provision, Manufacturer shall pay to Sealy, upon demand, the sum of \$10.00 for each Sealy Product sold in violation thereof. On notice from Sealy, Manufacturer will promptly discontinue making such sales and/or shipments.

Manufacturer's Good Faith

15. Manufacturer shall not aid, abet or assist any other corporation, partnership, or individual to do anything which might in any way constitute a violation of any provision of this contract or an infringement of any of the patents, copyrights, trade-marks and trade names of Sealy. Manufacturer will not sell or deliver to others, or aid, or assist others in the use of, any of the Sealy labels, brands, or [fol. 1171E] materials, without the written consent of Sealy. Manufacturer hereby agrees not to manufacture or sell, directly or indirectly, any mattress, studio couch, box spring, pillow, cushion, sofa bed, or other product which is of a kind or bears a label, trade name or trade-mark which is nationally advertised, or nearly so, in competition with Sealy Products.

Inferior Products

16. Manufacturer will manufacture and sell Sealy Products strictly in accordance with this contract and will pay to Sealy, on request, the full retail price of any Sealy Product, sold by it to any purchaser, on the production of evidence that said product was not made in accordance with this contract, or that it was mislabeled or misbranded, or that, in the manufacture of it, inferior materials or workmanship were used, so that Sealy may replace any such product, which Sealy engages to do upon payment as aforesaid.

Price Control by Sealy

17. Sealy and Manufacturer believe that the good will of Sealy Products will be seriously damaged if they are sold at cut retail prices. Manufacturer, therefore, agrees to contract, orally or in writing, with each retailer to whom

it sells Sealy Products that such retailer shall not resell the same at prices less than the minimum retail prices therefor fixed by Sealy, provided such contracting be not contrary to any State or Federal law governing the particular contract. Manufacturer agrees to use all legal and equitable remedies open to it to enforce such contracts.

Records and Reports of Manufacturer

18. Manufacturer shall keep detailed, accurate, and complete records and accounts of all Sealy Products made in its territory during each month under this contract, and shall give to Sealy or its authorized representatives free access to all of said records and accounts and the right [fol. 1172E] to audit and make copies of and statements from said records and accounts, at any and all reasonable times. Manufacturer shall make up and send to Sealy, on or before the fifteenth (15th) day of each month, a true and complete report of all of said products made in its territory during the preceding month.

Sealy Labels

19. No Sealy Product shall be sold by Manufacturer without having affixed to it the copyrighted or other label designated therefor by Sealy. Neither the Sealy name nor any Sealy trade-mark or trade name shall be affixed to a Sealy product or appear thereon other than by a copyrighted Sealy label or in such other manner as Sealy shall prescribe. All Sealy labels shall be in the form prescribed by Sealy, and Manufacturer shall not attach or affix a label, copyrighted or otherwise, containing the name "Sealy" or any Sealy trademark or trade name to a product other than one manufactured strictly pursuant to and in accordance with this contract, nor shall Manufacturer in any other way represent that a product not made strictly pursuant to and in accordance with this contract, is a Sealy product.

Sealy hereby licenses Manufacturer to have copies made of the labels copyrighted by Sealy and to obtain the same, but only in the manner and according to the procedure hereinafter provided for, and to use the same. Manufacturer shall place and use said labels with respect to Sealy Products as directed by Sealy, and none shall be placed on

or used in connection with any product not made strictly pursuant to and in accordance with this contract. This license shall be effective so long as this contract is in force and effect, and shall terminate when this contract is terminated. The titles of the labels which are the subject of this license are:

For Mattresses:

Sealyrest Tuftless, Truease, Super Rest, Natural Rest, Airvent, Enchanted Nights, Tuftless, Sunspun, Sleep Ensemble Mattress Unit, Sleep Charm, Airlite Mattress [fol. 1173E] Unit, Super Sleep Ensemble Mattress Unit.

For Upholstered Box Springs:

Sealyrest, Truease, Super Rest, Natural Rest, Airvent, Enchanted Nights, Sleep Charm, Sunspun, Tuftless, Airlite Foundation Unit, Sleep Ensemble Foundation Unit, Super Sleep Ensemble Foundation Unit.

Sealy may require other and additional labels to be placed on Sealy Products and shall have the right to prescribe the form thereof, the position in which the same shall be placed on the product, and also the name of the person or company to furnish the same to Manufacturer.

All Sealy labels shall be obtained by Manufacturer in the following manner and not otherwise:

Sealy will designate a person or company to furnish Sealy labels to Manufacturer. Manufacturer desiring labels, shall send to Sealy, in duplicate, a regular duly executed order on the said designated label manufacturer or distributor for the amount and kind of labels desired, together with a check to the order of Sealy in an amount equal to the total of the sums required to be paid for said labels ordered under the terms of paragraph 20 hereof. When these conditions are complied with, Sealy will promptly transmit the original order to the designated label manufacturer or distributor for fulfillment. Manufacturer will then pay the cost of the labels direct to the label manufacturer or distributor. Manufacturer specifically agrees that it will neither order Sealy labels directly from the designated label manufacturer or distributor, nor obtain Sealy labels in any manner whatsoever other than that herein prescribed.

Manufacturer's order for any Sealy labels under this paragraph shall be for a quantity of not less than 25 labels of the particular class ordered, as the same are classified in paragraph 20 hereof, and if labels of more than one class [fol. 1174E] are ordered, the order shall be for a minimum of 25 labels of each class of labels ordered.

20. Manufacturer shall pay to Sealy, by the procedure prescribed in paragraph 19 hereof, as consideration under this contract, the following amounts for Sealy labels ordered under the provisions of said paragraph 19.

Labels for mattresses or upholstered box springs priced by Sealy at wholesale:

Standard Mattresses and Box Springs:

Class I.....	at \$11.00 or less	.25 each
Class II.....	from \$11.01 to \$13.00	.35 "
Class III.....	" \$13.01 to \$15.50	.50 "
Class IV.....	" \$15.51 to \$17.75	.75 "
Class V.....	" \$17.76 to \$23.50	\$1.00 "
Class VI.....	" \$23.51 to \$28.75	\$1.50 "
Class VII.....	" \$28.76 to \$35.75	\$2.00 "
Class VIII.....	" \$35.76 to \$47.50	\$3.00 "
Class IX.....	" \$47.51 and up	\$5.00 "
Hotel Special Model A.....	\$20.50	.50 "
Hotel Special Model B.....	\$13.50	.35 "
Little Darling Crib Mattress, Style A.....		.10 "
Little Darling Crib Mattress, Style B.....		.10 "

Crestline Mattresses and Box Springs:

Class A.....	from \$ 7.51 to \$ 8.50	.10 each
Class B.....	" \$ 8.51 to \$ 9.50	.15 "
Class C.....	" \$ 9.51 to \$10.50	.20 "
Class D.....	" \$10.51 to \$11.00	.25 "
Class E.....	" \$11.01 to \$13.00	.35 "
Class F.....	" \$13.01 to \$15.50	.50 "
Class G.....	" \$15.51 to \$17.75	.75 "
Class H.....	" \$17.76 to \$23.50	\$1.00 "
Class J.....	" \$23.51 to \$28.75	\$1.50 "
Class K.....	" \$28.76 to \$35.75	\$2.00 "
Class L.....	" \$35.76 to \$47.50	\$3.00 "
Class M.....	" \$47.51 and up	\$5.00 "

* Promotional Mattresses and Box Springs:

Class I.....	at \$11.00 or less	.25 each
Class II.....	from \$11.01 to \$13.00	.35 "
Class III.....	" \$13.01 to \$15.50	.50 "
Class IV.....	" \$15.51 to \$17.75	.75 "
Class V.....	" \$17.76 to \$23.50	\$1.00 "
Class VI.....	" \$23.51 to \$28.75	\$1.50 "
Class VII.....	" \$28.76 to \$35.75	\$2.00 "
Class VIII.....	" \$35.76 to \$47.50	\$3.00 "
Class IX.....	" \$47.51 and up	\$5.00 "

[fol. 1175E] Labels for Studio Couches priced by Sealy at wholesale:

Standard Studio Couches:

Class I.....	at \$24.50 or less	.25 each
Class II.....	from \$24.51 to \$29.50	.50 "
Class III.....	" \$29.51 to \$39.50	.75 "
Class IV.....	" \$39.51 to \$49.50	\$1.00 "
Class V.....	" \$49.51 and up	\$1.50 "

Crestline Studio Divans:

Class A.....	at \$24.50 or less	.25 each
Class B.....	from \$24.51 to \$29.50	.50 "
Class C.....	" \$29.51 to \$39.50	.75 "
Class D.....	" \$39.51 to \$49.50	\$1.00 "
Class E.....	" \$49.51 and up	\$1.50 "

Promotional Studio Divans:

Class I.....	at \$24.50 or less	.25 each
Class II.....	from \$24.51 to \$29.50	.50 "
Class III.....	" \$29.51 to \$39.50	.75 "
Class IV.....	" \$39.51 to \$49.50	\$1.00 "
Class V.....	" \$49.51 and up	\$1.50 "

For labels on any products not herein specified, Sealy shall have the right to set the consideration per label to be paid by Manufacturer.

Minimum Consideration

21. (a) Manufacturer agrees to pay to Sealy for each month during which this contract is in effect, a minimum consideration of \$100.00 per month for the first six months immediately following the effective date of this contract; \$125.00 per month for the next six months; \$150.00 per month for the next six months; \$200.00 per month for the next six months; and \$250.00 for each month thereafter.

(b) However, the amount of this minimum consideration due and payable for any such month shall be reduced by the amount paid for labels during said month at the rates and under the terms of paragraph 20 hereof, and if the amount so paid for labels exceeds the minimum consideration, no minimum shall be due and payable for said month.

Carry-Over Credits

(c) Not later than the fifteenth day immediately following the end of the first month after the effective date of this contract; and not later than the fifteenth day immediately following the end of each and every such month thereafter, Manufacturer shall pay to Sealy the amounts becoming due and payable under this paragraph. However, at the end of each six months following the effective date of this contract, or at the end of any lesser period in the event of a termination of this contract under the provisions hereof, if the amount paid to Sealy by Manufacturer during such period under the terms of paragraph 20 and of this paragraph exceeds the product of the minimum amount payable per month under this contract times the number of months contained in said period, then Manufacturer shall be entitled to a credit in the total amount of any minimum payment or payments made by it under the provisions of Sections (a) or (b) of this paragraph during such period, but not to exceed the difference between the total amount paid under the terms of paragraph 20, and of this paragraph, and the product of the minimum amount payable per month times the number of months contained in said period. This credit shall be applied, in Manufacturer's discretion, either as a credit on future purchases of Sealy labels, or on a minimum payment or payments becoming due and payable under the terms of this paragraph. In the event this contract is terminated while such credit still stands in favor of Manufacturer, then Sealy shall pay the amount of the same to Manufacturer, but if there is any indebtedness then owing from Manufacturer to Sealy, then Sealy shall have the right to apply the said credit to said indebtedness.

Option in Sealy to Buy Labels

22. On any termination of this agreement, Sealy shall have an option for a period of thirty days from such termination [fol. 1177E] to buy from Manufacturer all or any part of the Sealy labels referred to in this contract, which Manufacturer has on hand at that time and not already placed on Sealy Products, at such prices as Manufacturer actually paid the label manufacturer for the same.

Automatic Termination of Contract

23. In the event Manufacturer becomes insolvent, files a petition in bankruptcy, is petitioned against in bankruptcy, files or suffers to be filed proceedings for reorganization under Section 77B of the Bankruptcy Act, suspends business, winds up its business, dissolves, suffers a receiver to be appointed or assigns its assets for benefit of creditors, then automatically and simultaneously this contract shall terminate.

Arbitration and Termination

24. All claims, demands, disputes, controversies, differences or misunderstandings between the parties hereto, whether of law or of fact, arising under, through or by virtue of this agreement, except the matters referred to in the preceding paragraph, shall be submitted to arbitration before the arbitrators hereinafter provided for according to the procedure hereinafter prescribed, and decided by them rather than by action in the Courts. The party desiring an arbitration at any time shall give notice to the other party stating the name of the arbitrator selected by it and his address, and stating concisely all matters to be arbitrated and its contentions in connection therewith. The other party shall then within fifteen (15) days from the receipt of said notice inform the first party of the name of its arbitrator and his address, and furnish to the first party an answer stating its contentions in the matter. The two arbitrators so appointed shall choose a third arbitrator, and the three so selected shall constitute the arbitration board. If the three arbitrators are unable to agree on the time and place of their meeting together, the third arbitrator's decision in the matter shall be final. In any event, the Board must begin its deliberations within fifteen (15) days from the time the third arbitrator is chosen. The parties shall serve on the Board copies of the statements of their contentions within ten (10) days after the Board has been selected. The Board may make its own investigation and hear both sides orally or in writing. The Board's decision by a majority vote on law or fact shall be final, binding and conclusive on the parties without any right of appeal. The Board shall render its decision at least within thirty (30) days from the date the

third arbitrator is chosen. Failure by either of the parties or their arbitrators to take any of the steps required by this paragraph shall automatically operate as an adjudication against it.

If the Board's decision is that one of the parties has breached this contract, then such party shall have thirty (30) days after notice of such decision within which to substantially make up or remedy its default. The Board may award reasonable damages to the injured party. If it does, payment of the damages shall also constitute remedying the default. If the defaulting party fails to pay the damages awarded or otherwise remedy the default in accordance with this paragraph within said thirty (30) days, the injured party shall have the right to immediately terminate this contract by notice to the defaulting party.

Also, Manufacturer may terminate this contract after six months' notice of intention so to terminate. This notice of intention, once given, shall not be revokable, and automatically, at the end of that time, this contract shall be terminated.

Unless this contract is terminated under the provisions of paragraph 23 or of this paragraph, it shall remain in [fol. 1179E] full force and effect until terminated by mutual agreement of the parties hereto.

25. On each certificate for Sealy stock issued to or held by Manufacturer, there shall be placed a notation showing that it is issued and held subject to the provisions of this contract. If this contract is terminated under any of its provisions, Sealy shall have an option to purchase all of the Sealy stock which Manufacturer owns. The option shall be exercisable only between the 20th and 30th days following the day on which the contract terminates. The option to buy shall be at \$100.00 per share cash unless Manufacturer already has a bona fide existing offer for the stock at more than \$100.00 cash per share. In such case Manufacturer shall exhibit satisfactory and complete evidence of such offer to Sealy, in which case Sealy shall have an option at such higher price, to be exercised as aforesaid.

Manufacturer agrees not to sell or agree to sell any of its Sealy stock without first notifying and furnishing to Sealy complete evidence of the offer or offers which it has

and the terms thereof, including the name and address of the offeror, and Sealy shall have an option for thirty days from the time of such notification to purchase Manufacturer's Sealy stock on the same terms as those contained in the offer which Manufacturer has received. Any sale or transfer contrary to the terms of this paragraph shall be null and void. If Manufacturer does not sell its stock within thirty days after the expiration of the said option period, then Manufacturer's stock shall become again subject to the terms of this contract. In order to retain its rights under this contract, Manufacturer must retain at least five shares of its Sealy stock.

[fol. 1180E] Assignment of Rights Under This Contract

26. This contract is personal with Manufacturer, and Manufacturer shall not have the power to assign or transfer its rights, in whole or in part, within the whole or any part of the territory herein granted, nor shall this contract be assignable or transferable in whole or in part by operation of law.

Termination No Release from Obligation Already Accrued

27. No termination of this contract shall release either party from any obligation on its part which has accrued up to the time of said termination. Failure of Sealy to notify Manufacturer of any breach of this contract, or any default under it, shall not constitute a waiver of any such breach or default, or a waiver of the right of Sealy to terminate this contract at a later date on account thereof, or on account of any other subsequent breach or default.

Manufacturer Not Sealy's Agent

28. Manufacturer shall have no authority to bind Sealy upon any contract or obligation whatsoever. Nothing in this contract shall be construed as constituting Manufacturer an agent of Sealy for any purpose. Sealy shall not be liable for any acts or omissions of Manufacturer, except as elsewhere herein may be expressly provided for, for any unsatisfactory merchandise made or sold by Manufacturer, or for any misrepresentations made by Manufacturer.

Notices

29. All notices provided for or to be given under this contract shall be in writing.

30. This contract shall be deemed separable and if any portion hereof shall be held invalid for any reason, the remainder shall not thereby be invalidated but shall remain in full force and effect.

31. This contract is executed in duplicate.

Effective Date

32. This contract shall be binding and effective from the [fol. 1181E] date above written.

In Witness Whereof, the parties by their duly authorized officers or agents, have caused this agreement to be executed, intending to be legally bound thereby.

Sealy, Incorporated, by H. E. Wolf, President.

Attest:

R. G. Culp, Asst. Secretary.

U. S. Bedding Company, by Jacob R. Haas, Pres.

Attest:

J. O. Millard.

2/9/38

[fol. 1182E]

"Exhibit A"

Sealy Specifications

Sealy Fastasleep

Cover	—6 Oz. blue and white stripe or equal.	
Burlap	—7 or 8 Oz.	
Border	—Optional	
Filling	—35 lbs. felt (Good Millrun Linters)	
Vents	—4	
Buttons	—78 4 x 6 Diamond Tuft	
Tailoring	—Outside Roll or French Edge, as desired	
	Cloth Handles	
Unit	—Sealy "Durolife" # 3617	
Packing	—Paper bag or non-test carton for truck shipment, 200 test carton for I.C.C.	
Marks	—Sealy Fastasleep Printed Label	
	Sealy Fastasleep Supp. Label	
	Wholesale Price.....	\$11.00
	Resale Price.....	19.95
	Royalty.....	.25
	P.M.....	Optional

Sealy Truease

Cover	—Damask as specified or ACA Preferred Cover—Truease Panel (Golding Brothers—32½"×56")	
Burlap	—7 or 8 Oz.	
Border	—Prebuilt with embroidered eye-lets.	
	Preferred border # 4217 (CMQ—14¼")	
Filling	—38 lbs. Felt (Millrun Linters).	
Finish	—Tape Edge	
Buttons	—78 4 x 6 Diamond Tuft	
Tailoring	—Inside Roll Handles	
Unit	—Sealy "Durolife" # 3617	
Packing	—Paper Bag or non-test carton for truck shipment. 200 test carton for I.C.C.	

Marks

—Sealy Truease Printed Label	
Sealy Truease Supp. Label	
Wholesale Price.....	\$12.75
Resale Price.....	24.75
Royalty.....	.35
P.M.....	.50

Sealy Truease Style B (Tuftless)

Cover

- Damask as specified or ACA Preferred Cover—Truease Panel (Golding Brothers—32½¢—56")

Burlap Border

- 7 or 8 Oz.
- Prebuilt with embroidered eyelets Preferred border # 4217 (CMQ—14¼¢)

Filling

- Option of 38% compressed (Mill-run) Linter felt or equal, Sisal pads and felt, coireen fibre pads and felt, or woven wire and felt.

Finish

- Tape Edge

Tailoring

- Inside Roll, Cloth Handles

Unit

- Sealy "Durolife" # 3617

Packing

- Paper bag or non-test carton for truck shipment. 200 test carton for I.C.C.

Marks

—Sealy Truease Printed Label	
Sealy Truease Style B Supp. Label	
Wholesale Price.....	\$12.75
Resale Price.....	24.75
Royalty.....	.35
P.M.....	.50

[fol. 1183E]

Sealy Natural Rest

Cover

- Damask as specified or ACA Preferred Cover—Natural Rest Panel (Golding Brothers—40¢—56")

Border

- Prebuilt, with embroidered eyelets. Preferred Border—# 4218 (CMQ—14¼¢)

Filling

- 38 Lbs. Felt (Millrun Linters)

Finish

- Mercerized Tape Edge Made on Tape Edge Machine

Buttons

- 78 4 x 6 Diamond Tuft

**Tailoring
Unit
Packing**

- Inside Roll Handles
- Sealy "Durolife" # 3618
- Paper bag or non-test carton for truck shipment. 200 test carton for I.C.C.

Marks

- Sealy Natural Rest Woven Label
- Sealy Natural Rest Supp. Label

Wholesale Price.....	\$15.50
Resale Price.....	29.50
Royalty.....	.50
P.M.....	.75

Sealy Natural Rest Style B (Tuftless)

Cover

- Damask as specified or ACA Preferred Cover—Natural Rest Panel (Golding Brothers—40¢—56")

**Burlap
Border**

- 7 or 8 Oz.
- Prebuilt, with embroidered eyelets. Preferred Border—# 4218 (CMQ—141¼¢)

Filling

- Option of 38% compressed (Millrun) Linter felt or equal, Sisal pads and felt, coireen fibre pads and felt, or woven wire and felt.

Finish

- Mercerized Tape Edge Made on Tape Edge Machine

**Tailoring
Unit
Packing**

- Inside Roll Handles
- Sealy "Durolife" # 3618
- Paper bag or non-test carton for truck shipment, 200 test carton for I.C.C.

Marks

- Sealy Natural Rest Woven Label
- Sealy Natural Rest Style B Supplementary Label

Wholesale Price.....	\$15.50
Resale Price.....	29.50
Royalty.....	.50
P.M.....	.75

Sealy Air Vent

Cover

- Damask, as specified, or ACA Preferred Cover—Air Vent Panel (Golding Brothers) 47½¢—56"

Burlap	—7 or 8 Oz.
Border	—Prebuilt with embroidered eyelets Preferred Border #4219 (CMQ—14¼¢)
Filling	—38 Lbs. Fancy 1st Cut Linters
Finish	—Mercerized Tape Edge
Buttons	—78 4 x 6 Diamond
Tailoring	—Inside Roll Handles
Unit	—Sealy "Durolife" #3618
Packing	—Paper bag or non-test carton for truck shipment, 200 test carton for I.C.C.
Marks	—Sealy Air Vent Woven Label Sealy Air Vent Supp. Label
	Wholesale Price..... \$17.75
	Resale Price..... 34.50
	Royalty..... .75
	P.M..... 1.00

[fol. 1184E] Sealy Air Vent Style B (Tuftless)

Cover	—Damask, as specified, or ACA Preferred Cover—Air Vent Panel (Golding Brothers) 47½¢—56"
Burlap	—7 or 8 Oz.
Border	—Prebuilt with embroidered eyelets. Preferred Border #4219 (CMQ—14¼¢)
Filling	—Option of 38 lbs. Felt (Fancy 1st Cut Linters) or equal, Sisal pads and felt, coireen fibre pads and felt, or woven wire and felt.
Finish	—Mercerized Tape Edge
Tailoring	—Inside Roll Handles
Unit	—Sealy "Durolife" #3618
Packing	—Paper bag or non-test carton for truck shipment, 200 test carton for I.C.C.
Marks	—Sealy Air Vent Woven Label Sealy Air Vent Style B Supp. Label
	Wholesale Price..... \$17.75
	Resale Price..... 34.50
	Royalty..... .75
	P.M..... 1.00

Sealy Enchanted Nights

Cover	—Damask, as specified, or ACA Preferred Cover—Enchanted Nights Panel (Golding Bros.) 57½¢—56"
Border	—Prebuilt with embroidered eyelets Preferred Border—# 4221 (CMQ)—21¢
Filling	—Burlap Spring Cover 7 or 8 Oz. 38 Lbs. Fancy 1st Cut Linters
Unit	—Sealy "Durolife" # 3618
Tailoring	—Inside Roll Edge, Handles
Finish	—Mercerized Tape Edge
Buttons	—78 metal, 4 x 6 Diamond Tuft
Packing	—Paper bag or non-test carton for truck shipment, 200 test carton for I.C.C.
Marks	—Sealy Enchanted Nights Woven Label Sealy Enchanted Nights Supp. Label
	Wholesale Price.....\$21.00
	Resale Price.....39.50
	Royalty.....1.00
	P.M.....1.00

Sealy Enchanted Nights Style B (Tuftless)

Cover	—6½ Oz. 32" basis, 56" width Preferred Cover—Covington, Waveland, or Kingsbury (Blumenthal Print Works) 26¢ Yd.
Burlap	—8 Oz.
Border	—4 Row Stitched, prebuilt with Felt and Muslin Inside or vertical stitched border
Filling	—Two 51 x 73 Nukraft Pads, made by the B.F. Goodrich Co. 20 Lbs. Felt (Fancy 1st Cut Linters)
Finish	—Mercerized Tape Edge, mattress completed on Tape Edge Machine
Unit	—Sealy "Durolife" # 3618
Tailoring	—Inside Roll, Cloth Handles
Packing	—Paper bag or non-test carton for truck shipment, 200 test carton for I.C.C.

Marks	—Sealy Enchanted Nights Woven Label
	Sealy Enchanted Nights Style B
	Supplementary Label
	Wholesale Price..... \$21.00
	Resale Price..... 39.50
	Royalty..... 1.00
	P.M..... 1.00

[fol. 1185E]

Sealy Tuftless (Air-woven)

Cover	—Damask, ACA, or H Tick
	Recommended Cover—Whitaker
	H Tick, 20¢—32"
Border	—Plain
Tailoring	—Outside Roll Edge, Tape Edge,
	Handles
Filling	—50 Lbs. Strict Middling Harsh
	1/8" Staple Cotton or Better,
	ginned or garnetted
Finish	—Mercerized Tape Edge
	No Tufts
Packing	—Paper bag or non-test carton
	for truck shipment, 200 test
	carton for I.C.C.
Marks	—Sealy Tuftless Woven Label
	Sealy Tuftless Supp. Label
	Wholesale Price..... \$21.00
	Resale Price..... 42.50
	Royalty..... 1.00
	P.M..... 1.00

Sealy Rest

Cover	—Damask, as specified, or ACA
	Preferred Cover—Sealy Rest Panel
	(Golding Brothers) 57 1/2¢—56"
Burlap	—8 Oz.
Border	—Prebuilt with embroidered eyelets.
	Preferred Border—# 4223 (CMQ) 14 3/4¢
Filling	—Two 51 x 73 Nukraft Pads, made
	by the B. F. Goodrich Co.
	20 Lbs. Felt (Fancy 1st Cut Linters)
Finish	—Mercerized Tape Edge
Unit	—Sealy "Durolife" # 3618

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Tailoring
Packing

- Inside Roll Handles
- Paper bag or nontest carton for truck shipment, 200 test carton for I.C.C.

Marks

- Sealy Rest Tuftless Woven Label
- Sealy Rest Tuftless Supplementary Label
- Wholesale Price..... \$23.05
- Resale Price..... 44.50
- Royalty..... 1.00
- P.M..... 1.50

Super Sealy Rest

Cover

- Damask, as specified, or ACA (8 Oz. Herringbone)
- Preferred Cover—Super Rest Panel (Golding Brothers) 65¢—56" 8 Oz.

Burlap
Border

- Prebuilt with embroidered eyelets
- Preferred Border—# 4216 (CMQ) 22½¢

Filling

- Two 51 x 73 Nukraft Pads made by the B. F. Goodrich Co.
- 20 Lbs. Fancy 1st Cut Linters

Finish
Tailoring
Unit
Packing

- Mercerized Tape Edge
- Inside Roll Handles
- Sealy "Durolife" # 3616
- Paper bag or non-test carton for truck shipment, 200 test carton for I.C.C.

Marks

- Super Sealy Rest Woven Label
- Super Sealy Rest Supplementary Label
- Wholesale Price..... \$28.75
- Resale Price..... 54.50
- Royalty..... 1.50
- P.M..... 1.75

[fol. 1186E]

Sealy Sleep Ensemble Base

Cover

- Damask, as specified, or ACA
- Preferred Cover—Sleep Ensemble All Over Design (Golding Brothers)—52½¢—56"

Border

- 5 Row Cord Edge

Base	—Helical Tied Unit nailed to wood frame and snubbed
Coils	—90 # 11 Standard Wire Single Cone
Slats	—10 1 x # 11 Steel
Border Wire	—# 0
Helicals	—72 Pr. # 16 Standard Wire Interlocked.
Frame	—Outside Box Spring Frame
Cover	—7 or 8 Oz. Burlap placed over coils
Unit	—180 Coils # 13 Standard Innerspring Unit, sewed on top of coils.
Filling	—1 Sisal Pad All over 56" x 78" 7 lbs. Fancy 1st Cut Linters
Top Border	—# 4 attached to unit by clips
Cover	—7 or 8 Oz. Burlap sewed to top of innerspring unit.
Vents	—Four
Handles	—Four Cloth
Bottom Tick	—Regular Sheeting
Marks	—Sealy Sleep Ensemble Woven Foundation Label

Sealy Sleep Ensemble Mattress

Cover	—Damask, as specified, or ACA Preferred Cover—Sleep Ensemble All Over Design (Golding Bros) 52½" — 56"
Boxing	—2½"
Filling	—One 51 x 73 Nukraft Pad 28 Lbs. Fancy 1st Cut Linters
Tailoring	—2 Row Cord Edge Tuftless Finish
Packing	—Paper bag or non-test carton for truck shipment, 200 test carton for I.C.C.
Marks	—Sealy Sleep Ensemble Woven Mattress Label Sealy Sleep Ensemble Supplementary Label
	Wholesale Price..... \$35.75
	Resale Price..... 69.50
	Royalty..... 2.00
	P.M..... 2.50

Construction Note: Pad must be filled in Muslin bag and closely interlaced before filling in outside ticking. Cover muslin bag with enough felt to eliminate impressions from lacing.

Sealy Sunspun

Cover	—Sunshine Satin or Equal Preferred Cover—Sunshine Satin (Arthur Kahn). 72½¢ to 82½¢
Border	—4 Row Flexo Cord
Burlap	—8 Oz.
Filling	—2 Nukraft Pads 51 x 73 20 Lbs. No. 1 Staple Cotton Felt
Tailoring	—4 Metal Handles—Jiffy, Velv-O-Grip Handles, or equal Inside Roll Edge
Finish	—Cord Edge No Tufts
Unit	—Sealy "Durolife" # 3618
Packing	—Paper bag or non-test carton for truck shipment, 200 test carton for I.C.C.
Marks	—Sealy Sunspun Woven Label Sealy Sunspun Supplementary Label
	Wholesale Price..... \$35.75
	Resale Price..... 69.50
	Royalty..... 2.00
	P.M..... 2.25

[fol. 1187E]

Construction Details

—Made with # 3618 Unit. Burlap over unit, Nukraft on both sides of unit. 10 lbs. staple cotton felt on each side. Made with inside roll, cord edge. Made tuftless.

Sealy Airlite Ensemble Base

Cover	—Satin, as specified, or equal Preferred Cover—# 959 (Arthur Kahn) 57½¢—39/40"
Border	—5 Row Flexo Cord
Coils	—90 Coil, # 11 Standard or Premier Wire Coils, 10 x 9
Slats	—Ten 1 x # 11 Steel
Border Wire	—# 0

Helicals	—72 Pair, # 16 standard or premier wire interlocked.
Frame	—Outside Box Spring Frame
Cover	—7 or 8 Oz. Burlap
Unit	—180 Coils, # 13 Standard or premier Innerspring Unit sewed on top of coils
Filling	—1 Nukraft Pad 51" x 73" 5 Lbs. No. 1 Staple Cotton Felt
Top Border	—# 4 attached to Unit by clips
Cover	—7 or 8 Oz. Burlap sewed to top of innerspring unit.
Vents	—Eight
Handles	—Four Cloth
Bottom Tick	—Regular Sheeting
Marks	—Sealy Airlite Ensemble Woven Foundation Label

Sealy Airlite Ensemble Mattress

Cover	—Satin, as specified, or equal Preferred Cover—# 959 (Arthur Kahn) 57½" — 21½" / 40"
Boxing	—21½"
Filling	—15 lbs. Staple Cotton Felt 1 Nukraft Pad 51" x 73"
Tailoring	—2 Row Flexo Cord Edge Tuftless
Packing	—Paper bag or non-test carton for truck shipment, 200 test carton for I.C.C.
Marks	—Sealy Airlite Ensemble Woven Mattress Label Sealy Airlite Ensemble Supplementary Label

Wholesale Price.....	\$47.50
Resale Price.....	95.00
Royalty.....	3.00
P.M.....	3.50

Sealy Airlite Ensemble Construction Details

Mattress —Must be filled in Muslin bag and closely interlaced before filling in outside ticking. Cover muslin bag with enough felt to eliminate impressions from lacing. Made with 1 Nukraft pad in the center, 7½ lbs. of staple cotton felt on each side. Tuftless

[fol. 1188E]

Base —Made the same as our regular Sleep Ensemble base. Helical tied 90 coil spring on wood frame. 180 coil unit on top Burlap in between. Burlap over top unit. 1 Nukraft pad, 5 pounds of staple cotton felt.

Sealy Super Sleep Ensemble Base

Cover —Sunshine Satin or equal Preferred Cover—Sunshine satin (Arthur Kahn) dependent on color 72½¢ to 82½¢

Border Filling —5 Row Flexo Cord
—1 Nukraft Pad, 41" x 73"
4 lbs. staple cotton felt
7 or 8 oz. burlap placed over box spring coils

Construction —Ninety # 10 Gauge Wire Standard or Premier
10 rows long, 9 coils each, hand tied with twine 8 Ways

Border Wire —# 4 Gauge Steel attached by metal clips

Unit —12 Rows Wide, 22 Rows Deep, 264 Coils

264 Coils —200 Center Coils—15 Gauge Standard or Premier Wire
64 Outside Edge Coils—
14 Gauge Standard or Premier Wire.

	264 Coil Innerspring Unit attached to top of box spring base with metal clips Burlap 7 or 8 Oz. placed on top of innerspring unit.
Top Border	—# 4 attached to top of unit
Wire	with 34 clips.
Handles	—Taped Cloth
Bottom Tick	—550 Sheeting
Frame	—Wood reinforced End or Sides with 8 cross slats. Finished size 52½ x 74 4½" radius all corners.
Marks	—Sealy Super Sleep Ensemble Woven Foundation Label

Sealy Super Sleep Ensemble Mattress

Cover	—Sunshine Satin or Equal Preferred Cover—Sunshine Satin (Arthur Kahn) 72½ to 82½¢.
Boxing Trim	—3" —Bead Edge with 3 Row Flexo Cord. Two colored braid cord
Filling	—15 Lbs. No. 1 Staple Cotton Felt. 1 Nukraft Pad 51" x 73" 2 All Horse Mane Hair Pads— 55¢ lb. grade 2 Lambs Wool Bats 4 lbs.
Finish Packing	—No Tufts —Paper bag or non-test carton for truck shipment, 200 test carton for I.C.C.
Marks	—Sealy Super Sleep Ensemble Woven Mattress Label Sealy Super Sleep Ensemble Supplementary Label.
	Wholesale Price..... \$ 75.00
	Resale Price..... 150.00
	Royalty..... 5.00
	P.M..... 5.00

[fol. 1189E] **Sealy Super Sleep Ensemble Construction Details**

- Mattress** —Nukraft pad in center,
hair pad on each side of
Nukraft, sewed to the
Nukraft by means of twine
(similar to tufting).
7½ pounds of staple cotton
felt on each side of hair
pads. Filled into a muslin
bag and closely interlaced.
Place lambs-wool pad on each
side and fill into outside
cover.
- Base** —Burlap on top of box spring,
next to innerspring unit,
#4 border wire around the top
unit, burlap on top of the
second unit. Cushioned with
a Nukraft pad, 4½ pounds staple
cotton felt.

Sealy Hotel Special Model "A"

- Cover** —8 Oz. ACA Ticking
- Burlap** —7 or 8 Oz.
- Filling** —2 Nukraft Pads 51" x 73"
20 Lbs. 1st cut linter felt
- Finish** —Innerroll, Tape Edge
No Tufts
- Tailoring** —Mercerized Tape—Border
corded with 4 rows Flexo
Cord.
Jiffy, Velv-O-Grip Handles,
or Equal.
- Vents** —Eight
- Unit** —Sealy "Durolife" #3618
- Packing** —Paper bag or non-test carton
for truck shipment, 200 test
carton for I.C.C.

Marks	—Sealy Hotel Special Model "A"	
	Printed Label	
	Wholesale Price.....	\$20.50
	Royalty.....	.50
	P.M.,.....	None

Little Darling Crib Mattress Style "A"

Cover	—3 yards Sateen	
Boxing	—Vertical Stitch Boxing including 1 $\frac{1}{2}$ compressed felt.	
Filling	—Spring Unit 26" x 50" x 4" high 100" #2 Screen Wire 6 $\frac{1}{2}$ 1st Cut Linter Felt Table prepared, Tape Machine Finish	
Tailoring	—Ventilators—Cloth Binding Tuftless	
Packing	—Wrapper in Paper	
Marks	—Sealy Little Darling Printed Label	
	Wholesale Price.....	\$ 4.00
	Resale Price.....	9.75
	Royalty.....	.10
	P.M.....	Optional

Note—Cartons: Carriers will accept non-test cartons provided they are specified as such, namely, "Non-Test", in which case a 20% surcharge over the regular freight rate is applied under I.C.C. rulings. Non-Test Cartons, not specified as such, upon delivery to carriers are subject to a 300% surcharge upon detection by freight inspectors.

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[fol. 1190E] Sealy Box Spring Specifications

	Sealy Fastasleep	
Cover	—6 Oz. blue and white stripe or equal	
Border	—Optional	
Bottom Tick	—550 Sheeting	
Burlap	—7 or 8 Oz.	
Filling	—10 Lbs. of Felt (Millrun Linters)	

Frame Unit	—Skeleton Wood, no Slats	
	—90 Coil, helical wire tied, mounted on twisted slats nailed to wood frame	
Tailoring Packing	—Tape edge to match mattress	
	—Paper Bag or non-test carton for truck shipment, 200 test carton for I.C.C.	
Marks	—Sealy Fastasleep Printed Label	
	—Sealy Fastasleep Supp. Label	
	Wholesale Price.....	\$11.00
	Resale Price.....	19.95
	Royalty.....	.25
	P.M.....	Optional

Sealy Truease

Cover	—Damask, as specified, or ACA Preferred Cover—Truease Panel (Golding Brothers—32½"×56")	
Border	—Prebuilt with embroidered eyelets.	
	Preferred border # 4217 (CMQ—14¼")	
Bottom Tick	—550 Sheeting	
Burlap	—7 or 8 Oz.	
Filling	—10 Lbs. Felt (Millrun Linters)	
Frame Unit	—Skeleton wood, no slats	
	—90 Coil, helical wire tied, mounted on twisted slats nailed to wood frame or 63 Coil hand tied.	
Tailoring Packing	—Tape edge to match mattress	
	—Paper Bag or non-test carton for truck shipment, 200 test carton for I.C.C.	
Marks	—Sealy Truease Printed Label	
	—Sealy Truease Supp. Label	
	Wholesale Price.....	\$12.75
	Resale Price.....	24.75
	Royalty.....	.35
	P.M.....	.50

Sealy Natural Rest

- Cover —Damask as specific or ACA
Preferred Cover—Natural
Rest Panel (Golding Brothers—
40¢-56")
- Border —Prebuilt, with embroidered
eyelets.
Preferred Border—# 4218 (CMQ—
14¼¢)
- Bottom Tick —550 Sheeting
- Burlap —7 or 8 Oz.
- Filling —10 lbs. Felt (Millrun Linters)

[fol. 1191E]

Sealy Natural Rest

- Frame —Skeleton wood, no slats
- Unit —90 Coil, helical wire tied,
mounted on twisted slats
nailed to wood frame or 72
Coil hand tied.
- Tailoring —Mercerized Tape Edge
- Packing —Paper Bag or non-test carton
for truck shipment, 200 test
carton for I.C.C.
- Marks —Sealy Natural Rest Woven Label
Sealy Natural Rest Supp. Label
- | | |
|----------------------|---------|
| Wholesale Price..... | \$15.50 |
| Resale Price..... | 29.50 |
| Royalty..... | .50 |
| P.M..... | .75 |

Sealy Air Vent

- Cover —Damask, as specified, or ACA
Preferred Cover—Air Vent
Panel (Golding Brothers)
47½¢-56"
- Border —Prebuilt with embroidered
eyelets
Preferred Border # 4219
(CMQ-14¼¢)
- Bottom Tick —550 Sheeting

Burlap	—7 or 8 Oz.
Filling	—10 Lbs. Felt (Fancy 1st Cut Linters)
Frame	—Wood, 9 slats, 9 coils per slat, approximate weight of coils 19½ lbs. # 10 Standard or Premier Wire Coils
Tailoring	—Mercerized Tape Edge
Twine	—Italian Hemp, 8 Way, Hand Tied
Border Wire	—# 4 Acme, attached to edge coils with clips
Packing	—Paper Bag or non-test carton, for shipment, 200 test carton for I.C.C.
Marks	—Sealy Air Vent Woven Label Sealy Air Vent Supp. Label
	Wholesale Price..... \$17.75
	Resale Price..... 34.50
	Royalty..... .75
	P.M..... 1.00

Sealy Enchanted Nights

Cover	—Damask as specified or ACA Preferred Cover—Enchanted Nights Panel (Golding Bros.) 57½"–56"
Border	—Prebuilt with embroidered eyelets. Preferred Border—# 4221 (CMQ)—21¢
Bottom Tick	—550 Sheeting
Burlap	—7 or 8 Oz.
Filling	—10 Lbs. Felt (Fancy 1st Cut Linters)
Frame	—Wood, 9 Slats, 10 Coils per Slat, approximate weight of coils 21–6/10 lbs. # 10 Standard or Premier Wire Coils.

[fol. 1192E]

Tailoring	—Mercerized Tape Edge
Twine	—Italian Hemp, 8 Way, Hand Tied

Border Wire	—#4 Acme, attached to edge coils with clips
Packing	—Paper Bag or non-test carton for shipment, 200 test carton for I.C.C.
Marks	—Sealy Enchanted Nights Woven Label Sealy Enchanted Nights Supp. Label
	Wholesale Price..... \$21.00
	Resale Price..... 39.50
	Royalty..... 1.00
	P.M..... 1.00

Sealy Enchanted Nights Style "B" Box Spring

- Same specifications as for regular Enchanted Nights except covered and styled to match Enchanted Nights Style "D" Mattress.

Sealy Tuftless

Cover	—Damask, ACA, or H Tick Preferred Cover—Whitaker H Tick, 20¢—32"
Border	—Plain
Bottom Tick	—550 Sheeting
Burlap	—7 or 8 Oz.
Filling	—10 lbs. Felt (Fancy 1st Cut Linters)
Frame	—Wood, 9 Slat, 10 Coils per Slat, Approximate weight of Coils, 21-6/10 lbs. #10 Standard or Premier Wire Coils
Tailoring	—Mercerized Tape Edge
Twine	—Italian Hemp, 8 Way, Hand Tied
Border Wire	—#4 Acme, attached to edge coils with clips
Packing	—Paper Bag or non-test carton for shipment, 200 test carton for I.C.C.

Marks

—Sealy Tuftless Woven Label	
Sealy Tuftless Supp. Label	
Wholesale Price.....	\$21.00
Resale Price.....	42.50
Royalty.....	1.00
P.M.....	1.00

Sealy Rest**Cover**

- Damask, as specified, or ACA Preferred Cover—Sealy Rest Panel (Golding Brothers)—
57½-56"

Border

- Prebuilt with embroidered eyelets Preferred Border—#4223 (CMQ)
14¾"

**Bottom Tick
Burlap**

- 550 Sheeting
- 7 or 8 Oz.

[fol. 1193E]

Filling

- 5 Lbs. Fancy 1st Cut Cotton Linters
- One 51" x 73" Nukraft Pad

Frame

- Wood, 9 Slats, 9 Coils per Slat, Approximate weight of coils 19½ lbs.
- #10 Standard or Premier Wire Coils

Tailoring**Twine****Border Wire**

- Mercerized Tape Edge
- Italian Hemp, 8 Way, Hand Tied
- #4 Acme, attached to edge coils with clips.

Packing

- Paper Bag or non-test carton for truck shipment, 200 test carton for I.C.C.

Marks

- Sealy Rest Tuftless Woven Label
- Sealy Rest Tuftless Supplementary Label

Wholesale Price.....	\$23.50
Resale Price.....	44.50
Royalty.....	1.00
P.M.....	1.50

Super Sealy Rest

Cover	—Damask, as specified, or ACA (8 Oz. Herringbone) Preferred Cover—Super Rest Panel (Golding Brothers) 65¢-56"
Border	—Prebuilt with embroidered eyelets Preferred Border—# 4215 (CMQ)— 22½¢
Bottom Tick	—550 Sheeting
Burlap	—7 or 8 Oz.
Filling	—5 lbs. # 3 Fancy 1st Cut Lint One 51" x 73" Nukraft Pad
Frame	—Wood, 9 Slats, 10 Coils per Slat. Approximate weight of coils 21-6/10 lbs. # 10 Standard or Premier Wire Coils
Tailoring	—Mercerized Tape Edge
Twine	—Italian Hemp, 8 Way, Hand Tied
Border Wire	—# 4 Acme, attached to edge coils with Clips.
Packing	—Paper bag or non-test carton for truck shipment, 200 test carton for I.C.C.
Marks	—Super Sealy Rest Woven Label Super Sealy Rest Supp. Label
	Selling Price..... \$28.75
	Resale Price..... 54.50
	Royalty..... 1.50
	P.M..... 1.75

[fol. 1194E]

Sealy Sunspun

Cover	—Sunshine Satin or Equal Preferred Cover—Sunshine Satin (Arthur Kahn) 72½¢ to 82½¢
Border	—4 Row Flexo Cord
Bottom Tick	—Drill
Burlap	—7 or 8 Oz.
Filling	—One Nukraft Pad 51" x 73" 7 lbs. Staple cotton felt

Frame	—Wood, 9 Slats, 9 Coils per Slat. Approximate weight of coils 19½ lbs., # 10 Standard or Premier Wire Coils	
Finish	—Cord Edge	
Twine	—Italian Hemp	
Border Wire	—# 4 Acme, attached to coils by means of Clips	
Packing	—Paper Bag or non-test carton for truck shipment, 200 test carton for I.C.C.	
Marks	—Sealy Sunspun Woven Label Sealy Sunspun Supp. Label.	
	Wholesale Price.....	\$32.50
	Resale Price.....	59.50
	Royalty.....	2.00
	P.M.....	2.25

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[fol. 1195E] Sealy Studio Divan and Sofa Bed Specifications

S-O Efficiency

Base	—Square Corner, Back Pull, 40 Coil, Sisal Pad, and Felt or 100% Felt, Plain No Tufts.	
Pad	—Innerspring, Sisal Pads and Felt or 100% Felt, Buttoned	
Pillows	—50% Linters 50% Kapok	
Trim	—Small Insert Cord about 75¢ per gross yards	
Cover	—18¢ to 20¢—36" width	
Arms	—None	
Back	—None	
Package	—200 Test Carton or Paper Bags-	
	Wholesale Price.....	\$18.75
	Royalty.....	.25
	Suggested Resale.....	None
	P.M.....	Optional

S-00 Mayfair

Base	—Square Corner, Back Pull, 40 Coil, Sisal Pad, and Felt or 100% Felt, Plain No Tufts.	
Pad	—Innerspring, Sisal Pads and Felt or 100% Felt, Buttoned	
Pillows	—Spring Filled, Felt Upholstered or Kapok.	
Trim	—Small Insert Cord about 75¢ per gross yards.	
Cover	—18¢ to 20¢—36" width	
Arms	—Round Tubular, Wood Arm Rests.	
Back	—Round Tubular or Angle Iron, Uncovered.	
Package	—200 Test Carton or Paper Bags	
	Wholesale Price.....	\$22.75
	Royalty.....	.25
	Suggested Resale.....	None
	P.M.....	Optional

SN-1 Utility

Base	—Square Corner, Back Pull, 40 Coil, Burlap, # 80 Nukraft and Felt, Plain No Tufts.	
Pad	—Innerspring Sisal Pads and Felt or 100% Felt, 3.Cushion Effect (Double Auto Welts, Laced Down between Welts with 3 to 4 Buttons)	
Pillows	—Spring Filled, Felt upholstered or Kapok	
Trim	—Small Insert Cord, Tape or Equal	
Cover	—18¢ to 20¢—36" Width	
Arms	—None	
Back	—None	
Package	—200 Test Carton or Paper Bag	
	Wholesale Price.....	\$22.50
	Royalty.....	.25
	Suggested Resale.....	None
	P.M.....	Optional

[fol. 1196E]

SN-2 Cavalier

Base	—Square Corner, Front Pull, 40 Coil, Burlap, # 80 Nukraft and Felt, Plain No Tufts
Pad	—Innerspring, Sisal Pads and Felt or 100% Felt, 3 Cushion Effect (Double Auto Welts, Laced Down Between Welts with 3 to 4 buttons)
Pillows	—Spring Filled, Felt Upholstered, or Kapok
Trim	—Small Insert Cord, Tape, or Equal
Cover	—18¢ to 20¢—36" Width
Arms	—None
Back	—None
Package	—200 Test Carton or Paper Bag
	Wholesale Price..... \$23.75
	Suggested Resale..... 44.50
	Royalty..... .25
	P.M..... Optional

SN-3 Drop Back

Base	—Round Corner, 44 Coil, Drop Back Construction # 400, Burlap, # 80 Nukraft and Felt, Plain No Tufts
Pad	—Innerspring, Sisal Pads and Felt, or 100% Felt, 3 Cushion Effect (Double Auto Welts, Laced Down Between Welts With 3 to 4 buttons)
Pillows	—Spring Filled, Felt Upholstered or Kapok
Trim	—Small Insert Cord, Tape or Equal
Cover	—18¢ to 20¢—36" Width
Arms	—Square Tubular With Wood Arm Rest
Back	—Drop Back
Package	—200 Test Carton or Paper Bag
	Wholesale Price..... \$26.75
	Suggested Resale..... 49.50
	Royalty..... .50
	P.M..... Optional

SN-4 Mainliner

Base	—Bed Hi, Front Pull, Square Corners, Sisal Pads and Felt or 100% Felt (No Nukraft) Plain, No Tufts
Pad	—Innerspring, Sisal Pads and Felt or 100% Felt (No Nukraft), 3 Cushion Effect, Double Auto Welts and Laced Down between welts with 3 or 4 buttons.
Pillows	—Spring Filled, Felt Upholstered, or Kapok,
Trim	—Small Insert Cord, Tape or Equal
Cover	—Choice of 18¢ to 20¢—36" Width
Arms	—None
Back	—None
Packing	—200 Test Carton or Paper Bag
	Wholesale Price..... \$33.50
	Suggested Resale..... 64.50
	Royalty..... .75
	P.M..... Optional

[fol. 1197E]

SN-5 Empire

Base	—Square Corner, Front Pull, 44 Coils, Burlap, #80 Nukraft, Felt, Plain, No Tufts.
Pad	—Innerspring, Sisal Pads and Felt or 100% Felt (No Nukraft), 3 Cushion Effect, Double Auto Welts and Laced Down between Welts with 3 or 4 Buttons
Pillows	—Spring Filled, Felt Upholstered, or Kapok.
Trim	—Small Insert Cord, Tape or Equal.
Cover	—37¢ to 40¢—54" Width Preferred Cover—#540 (Pattern 88) (Southern Fabrics) 37½¢—54"
Arms	—#2000 Wood Arm—(Memphis)
Back	—Tubular, stationary, Walnut, Uncovered
Packing	—200 Test Carton or Paper Bags
	Wholesale Price..... \$30.75
	Suggested Resale..... 59.50
	Royalty..... .75
	P.M..... Optional

SN-6 Colonial

- Base** — Square corner, Front pull, Innerspring Unit, Burlap, # 80 Nukraft and Felt, Plain, No Tufts.
- Pad** — Innerspring, 1 Side Sisal Pad and Felt or 100% Felt With Burlap, the other side burlap, # 80 Nukraft and Felt, 3 Cushion Effect, Double Auto Welt and Laced down between welts with 3 or 4 buttons
- Pillows** — 2 Sunburst and 1 Oblong, Kapok filled Oblong Cushion placed in center.
- Trim Cover** — Small Insert Cord, Tape or Equal
— 37¢ to 40¢—54" Width
Preferred Cover—906—K (Golding)
25¢—36"
- Arms** — Combination # 642 (Pittsburgh)
- Back** — Combination # 642 (Pittsburgh)
- Packing** — 200 Test Carton or Paper Bag
- | | |
|-----------------------|----------|
| Wholesale Price..... | \$42.75 |
| Suggested Resale..... | 79.50 |
| Royalty..... | 1.00 |
| P.M..... | Optional |

[fol. 1198E]

SN-60 Oxford

- Base** — Square Corner, Front Pull, Innerspring Unit, Burlap, # 80 Nukraft and Felt, Plain, No Tufts.
- Pad** — Innerspring 1 Side Sisal Pad and felt or 100% Felt with burlap the other side burlap, # 80 Nukraft and felt, 3 Cushion effect, double auto welt, and laced down between welts with 3 or 4 buttons.
- Pillows** — 2 Sunburst and 1 Oblong, Kapok filled, Oblong cushion placed in center
- Trim Cover** — Small Insert Cord, Tape or Equal
— 37¢ to 40¢—54" Width
Preferred Cover—906—K (Golding)
25¢—36"

Packing	—200 Test Carton or Paper Bag	
	Wholesale Price.....	\$30.75
	Suggested Resale.....	59.50
	Royalty.....	75
	P.M.....	Optional

SN-7 Cogswell

Base	—Square Corner, Front Pad, 40 Coil, Burlap, # 80 Nukraft and Felt, Plain, No Tufts.	
Pad	—Innerspring, Sisal Pads and Felt or 100% Felt, 3 Cushion Effect, Double Auto Welts, Laced down Between Welts with 5 or more buttons	
Pillows	—Spring Filled, felt upholstered, or Kapok	
Trim	—Self-welt, or Equal	
Cover	—# 1700 @ .75¢ (Southern Fabrics)—54"	
Arms	—Cogswell (Cleveland # 5036)	
Back	—Cogswell (Cleveland # 5036)	
Logs	—Cogswell (Cleveland # 5036) or Equal	
Molding	—Cogswell (Cleveland # 5036) or equal	
Packing	—200 Test Carton or Paper Bag	
	Wholesale Price.....	\$42.75
	Suggested Resale.....	79.50
	Royalty.....	1.00
	P.M.....	Optional

SN-8 Chippendale

Base	—Square Corner, Front Pad, 40 Coil, Burlap, # 80 Nukraft and Felt, Plain No Tufts.	
Pad	—Innerspring, Sisal Pads and Felt or 100% Felt, 3 Cushion Effect, Double Auto Welts, Laced Down between welts with 5 or more buttons.	
Pillows	—Spring-filled, felt upholstered, or Kapok	
Trim	—Self-welt, or Equal	
Cover	—Southern Fabrics # 919 or # 957 at 80¢—54"	

Arms	—Chippendale (Cleveland # 5035)
Back	—Chippendale (Cleveland # 5035)
Legs	—Chippendale (Cleveland # 5035) Or Equal
Molding	—Chippendale (Cleveland # 5035) Or Equal
Packing	—200 Test Carton or Paper Bag
	Wholesale Price..... \$43.75
	Suggested Resale..... 84.50
	Royalty..... 1.00
	P.M..... Optional

[fol. 1199E]

SN-9 Cabriole

Base	—Square Corners, Front Pull, Bed Hi, Tight Seat # 547 Seng or Equal, Burlap, # 80 Nukraft and Felt, Plain No Tufts, No Cord or Seam Across Front Edge
Pad	—None
Pillows	—Spring Filled, Felt Upholstered or Kapok
Highrise	—Burlap, # 80 Nukraft and Felt ACA covered
Mattress	—Plain No Tufts
Trim	—Self Welt or Equal
Cover	—“Carmen” (Golding Bros.) 75¢—54”
Arms	—Cabriole (Cleveland # 5047)
Back	—Arms trimmed with hammered English Nails
Packing	● 200 Test Carton or Paper Bag
	Wholesale Price..... \$54.50
	Suggested Resale..... 104.50
	Royalty..... 1.50
	P.M..... Optional

SN-90 Renaissance

Base	—Square Corners, Front Pull, 40 Coil, Burlap, # 80 Nukraft and Felt, Plain No Tufts
Pad	Innerspring, Sisal Pads and Felt or 100% Felt, 3 Cushion Effect, Laced Down Between Double Auto Welts With 5 or more buttons

Pillows	—Spring Filled, Felt Upholstered or Kapok.
Trim	—Self Welt or Equal
Cover	—“Carmen” (Golding Bros), 75¢—54”
Arms)	—Cabriole (Cleveland # 5047)
Back)	—Arms trimmed with English Hammered Nails
Packing	—200 Test Carton or Paper Bags
	Wholesale Price..... \$47.75
	Suggested Resale..... 94.50
	Royalty..... 1.00
	P.M..... Optional

SN-10 Imperial

Base	—Square Corner, Front Pull, 44 Coils, Burlap, # 80 Nukraft, Felt, Plain, No Tufts
Seat Cushions	—3 Spring Filled, felt upholstered.
Back Pillows	—None—Upholstered back
Trim	—Self Welt or Equal
Cover	—80¢ to 85¢—54” Width Preferred Cover—Langday (U.S. Pile Fabric) 75¢—54”
Arms	—Upholstered (Pittsburgh)
Back	—Upholstered (Pittsburgh)
Packing	—200 Test Carton or Paper Bags
	Wholesale Price..... \$52.75
	Suggested Resale..... 99.50
	Royalty..... 1.50
	P.M..... Optional

[fol. 1200E]

SN-100 Monarch

Base	—Square Corner, Front Pull, Bed Hi, 44 Coils, Burlap, # 80 Nukraft, Felt, Plain, No Tufts
Seat Cushions	—3 Spring Filled, Felt Upholstered
Back Pillows	—None—Upholstered Back
Trim	—Self Welt or Equal
Cover	—80¢ to 85¢—54” Width Preferred Cover—Langday (U.S. Pile Fabric) 75¢—54”

Arms
Back
Packing

- Upholstered (Pittsburgh)
- Upholstered (Pittsburgh)
- 200 Test Carton or Paper Bag
- Wholesale Price \$59.50
- Suggested Resale 115.00
- Royalty 1.50
- P.M. Optional

SN-11 Lawson

Base

- Bed Hi, Square Corner, Front Pull,
Built on Seng # 48 Frame or Equal,
Burlap and 100% Felt or Burlap, Sisal
Pad and Felt.

Seat Cushions
Back Pillows

- 3 Spring Filled, Felt Upholstered
- 3 Attached Spring Filled, Felt Upholstered

Highrise
Mattress
Trim
Cover

- Burlap, # 80 Nukraft, Felt
- 8 Oz. ACA, Tuftless
- Self Welt or Equal
- 80¢ to 85¢—54" Width
- Preferred Cover—# 990 (Southern
Fabrics) 72½¢—54"

Arms
Back

- Upholstered Lawson (Cleveland # 5055)
- Upholstered Lawson (Cleveland # 5055)
attached spring cushions

Packing

- 200 Test Carton or Paper Bags
- Wholesale Price \$59.50
- Suggested Resale 115.00
- Royalty 1.50
- P.M. Optional

SN-12 London

Base

- Bed Hi, Square Corner, Front Pull,
Built on Seng # 48 Frame or Equal,
Burlap and 100% Felt or Burlap, Sisal
Pad and Felt

Seat Cushions
Back Pillows
Highrise
Mattress
Trim

- 3 Spring Filled, Felt Upholstered
- None—Upholstered back
- Burlap, # 80 Nukraft, Felt,
- 8 Oz. ACA, Tuftless
- Self Welt or Equal

Cover	—80¢ to 85¢—54" Width
	Preferred Cover—"Monarch" (A. Rydell)
	42½¢—54"
Arms	—Upholstered London (Cleveland # 5056)
Back	—Upholstered London (Cleveland # 5056)
Packing	—200 Test Carton or Paper Bags
	Wholesale Price..... \$62.75
	Suggested Resale..... 125.00
	Royalty..... 1.50
	P.M..... Optional

Note: Rothschild's "Famous" 36" at 16¾¢ recommended as a suitable base cloth for first six couches, using random reverses from stock for reverses on pillows and pad.

[fol. 1201E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1017

MANUFACTURER'S CONTRACT

This Contract, made at Pittsburgh, in the State of Pennsylvania, this 12th day of September, 1936, by Sealy, Incorporated, a Delaware corporation, hereinafter called "Sealy", and The Colorado Mattress Manufacturing Company, a partnership, having a regular place of business at Denver in the State of Colorado, hereinafter called "Manufacturer",

Witnesseth:

Whereas: Sealy has certain trade marks, trade names, methods, processes, specifications, and good will, which are of distinct value in the manufacture and sale of mattresses, studio couches, bed springs, bedding and similar products; and

Whereas, Manufacturer is a stockholder in Sealy, and it and other stockholders in Sealy are now engaged in the business of manufacturing and selling mattresses, studio couches, bedding, bed springs and similar products, and have adequate and suitable facilities for manufacturing and selling Sealy Products; and

Whereas, each and every such stockholder in Sealy desires to manufacture and sell, in addition to its present products, Sealy Products, within an exclusive territory and under the terms and conditions hereinafter set forth; and

Whereas, Sealy desires to assign exclusive territories to such stockholders and to contract with them, as independent contractors, to manufacture and sell Sealy Products therein, [fol. 1202E] Now, Therefore, in consideration of the promises and of the mutual agreements herein contained, it is hereby agreed between the parties hereto as follows:

Definition of "Sealy Products"

1. As used throughout this contract, the term "Sealy Products" shall mean all mattresses, studio couches, bed springs, box springs, pillows and cushions, manufactured,

or to be manufactured, and/or sold, bearing or having affixed thereto in any manner, the Sealy trade-name, and/or trade marks, or in any other fashion the work and name "Sealy".

Right to Manufacture and Sell

2. Manufacturer will, as an independent contractor and its own expense, during the term of this contract, manufacture Sealy Products, to-wit: Mattresses, studio couches, bed springs, box springs, pillows and cushions, and will do so under and strictly in accordance with the Sealy patents, methods, processes, exclusive rights, licenses, and specifications, now owned or controlled or hereafter acquired or controlled by Sealy, and sell the same within the territory hereinafter defined, under the Sealy trade name and trade-marks, so that the market and demand for said Sealy Products in the territory hereby allotted to Manufacturer will be satisfied so far as it is reasonably possible to do so, and Manufacturer further agrees it will use its best efforts to enhance the popularity and demand for said Sealy Products in the said territory.

Specifications

3. A true and correct copy of the specifications for the manufacture of Sealy Products is attached hereto, made a part hereof and marked "Exhibit A". Manufacturer agrees to manufacture all Sealy Products strictly in accordance with said specifications. At any time or times the Board of Directors of Sealy may, by a two-thirds vote of all its members, change said specifications and/or promulgate specifications for additional Sealy Products. When [fol. 1203E] new specifications are thus prepared or the specifications are thus changed for any Sealy Product and notice thereof, as defined in this agreement, is given to Manufacturer, such new or changed specifications shall become a part of this contract and after ninety (90) days have elapsed after said notice Manufacturer shall manufacture each Sealy Product strictly in accordance with said new or changed specifications.

4. Manufacturer also agrees that all materials, patents, designs, specifications, copyrights, processes, trade-marks, trade names and/or methods and/or the right to use the same, that are or shall become exclusive to or the property

of Sealy, or which Sealy controls or has interest in, now or in the future while this contract is in force, shall be used only in the manufacture and sale of Sealy Products.

Methods and Processes

5. Sealy agrees to furnish Manufacturer, upon demand, full information concerning its methods and processes, together with technical advice and directions as to the best methods of manufacturing Sealy Products. Manufacturer agrees to manufacture Sealy Products strictly and faithfully in accordance with the processes, methods, and directions from time to time furnished by Sealy. Said methods, processes and directions may be changed from time to time by Sealy or new ones promulgated by a two-thirds (2/3) vote of all the members of the Sealy Board of Directors. Said new or changed methods, processes and directions shall become effective as in the case of new or changed specifications.

Supervision by Sealy

6. Sealy shall exercise supervision and control over the manufacture of all Sealy Products by Manufacturer so as to insure that said products are made in conformity with Sealy specifications, processes, methods, directions and [fol. 1204E] patents and with the provisions of this contract. To enable Sealy to exercise such supervision and control, Manufacturer will furnish to Sealy, on demand, specimens of products manufactured under this contract and samples of the materials used and will afford duly accredited representatives of Sealy access to its factory and warehouses at reasonable times.

Right to Advertise

7. Manufacturer may advertise Sealy Products by means embodying or employing Sealy trade names, trade-marks, and labels. However, Manufacturer will discontinue any advertising of Sealy Products which is objectionable to Sealy, on notice by Sealy.

Patent, Trade-Mark Infringement

8. Sealy agrees to defend at its expense any and all suits against Manufacturer for or on account of any alleged in-

fringement, while this contract is in force, of any patent, copyright, trade-mark, or trade-name by the manufacture or sale by Manufacturer, in accordance with the provisions of this contract, of any Sealy Products, and to pay any judgments or decrees recovered in law or in equity against Manufacturer upon such claims or any of them.

9. Sealy agrees not to sue Manufacturer for infringement of any of its patents, copyrights, trade-names, trade-marks, methods, or processes by reason of any act committed by Manufacturer during the term of this contract, and in accordance and compliance with it.

Use of Name "Sealy" Admission of Sealy's Rights

10. Manufacturer may use the word "Sealy" in its corporate or business name and as a trade-mark or trade-name, in the form prescribed by Sealy, on all Sealy Products made by it during, but only during, the life of and while fully complying with this contract. On any termination or breach of this contract, all rights given to Manufacturer hereunder shall cease and Manufacturer shall forthwith drop the name "Sealy" from its corporate or business name and from its products, and shall not thereafter use the word "Sealy" or any of the "Sealy" patents, copyrights, trade-marks, trade names or labels. Manufacturer admits and concedes that Sealy is the full and complete owner, in its own name and right, of the patents, copyrights, trade-marks and trade names, under and by which Sealy Products have been and are to be manufactured, and disclaims any interest therein and any right thereto or any right to manufacture and/or sell any of said products except in accordance with this contract. Manufacturer expressly agrees that it will comply with the above provisions even if it has heretofore used the word "Sealy" in its name and/or in its business and/or on its products.

Territory

11. The exclusive territory hereby allotted to Manufacturer is as follows: All of Montana, Wyoming, Utah, Colorado, Arizona and New Mexico; the following Counties in South Dakota, to wit: Butte, Meade, Lawrence, Pennington, Custer, Washington, Fall River and Shannon; also

the following counties in Nebraska to wit: Sioux, Daws, Sheridan, Box Butte, Scotts Bluff, Morrill, Garden, Banner, Kimball, Cheyenne, and Deuel.

[fol. 1206E] Release of Sealy Territory

12. As part of the consideration of this contract, and in consideration of the like and mutual releases by several other stockholder-manufacturers of Sealy which they and Manufacturer believe to be for their individual and mutual benefit and to the best interests of Sealy, Incorporated, Manufacturer agrees to relinquish and release, and does relinquish and release to Sealy, in the whole and every part of Sealy Territory " ", as shown on Sealy Territories Map #2, attached hereto, made part hereof and marked "Exhibit C", all of its claims and rights of every nature to manufacture and/or sell Sealy Products and all rights and claims of every nature to in any way use or make use of the Sealy trade names, trade-marks, labels, copyrights, patents and/or exclusive rights now owned or controlled or hereafter owned or controlled by Sealy.

Approval of Manufacturers in Certain Cases

13. After execution of this contract, and as long as it is in force, Sealy will not contract with or grant any rights to any person, partnership, association or corporation for the manufacture and/or sale of Sealy Products within a part or the whole of Sealy Territory. " " as the same is shown and delimited on Sealy Territories Map #2, attached hereto, made part hereof and marked "Exhibit C", without the approval by the Board of Directors of Sealy of the qualifications of said proposed person, partnership, association or corporation to manufacture and sell Sealy Products.

Sales in or Shipments to Manufacturer's Territory

14. Sealy will not manufacture nor sell, nor will it, without the consent of Manufacturer, contract with or permit any other individual, partnership, association or corporation, to manufacture or sell Sealy Products within the exclusive territory above set aside to Manufacturer, so long

as this contract is in force. Sealy shall pay to Manufacturer, upon demand, as liquidated damages, \$10.00 for each mattress, studio couch or other Sealy Product sold or [fol. 1207E] shipped into Manufacturer's exclusive territory by Sealy, and \$10.00 less the cost of collection of the same, for each such article sold or shipped into Manufacturer's exclusive territory by any person, partnership, association or individual, which has in effect a contract with Sealy, identical or similar to this one; provided, that Sealy has succeeded in collecting the said \$10.00 for each such article from said person, partnership, association or corporation.

Restriction Upon Sales by Manufacturer

15. Manufacturer shall not sell, ship or deliver Sealy Products outside of its exclusive territory, nor shall it make any sale of Sealy Products, if it knows that the purchaser intends to resell, deliver or ship the same for resale out of said exclusive territory, nor shall it sell, ship or deliver any Sealy Products to any mail order house, without Sealy's written consent. For each violation of the next preceding provision, Manufacturer shall pay to Sealy, upon demand, the sum of \$10.00 for each mattress, studio couch or other Sealy Product sold in violation thereof. On notice from Sealy, Manufacturer will promptly discontinue making such sales and/or shipments.

Manufacturer's Good Faith

16. Manufacturer shall not aid, abet or assist any other corporation, partnership or individual to do anything which might in any way constitute a violation of any provision of this contract or an infringement of any of the patents, copyrights, trade-marks and trade names of Sealy. Manufacturer will not sell or deliver to others, or aid or assist others in the use of, any of the Sealy labels, brands, or materials, without the written consent of Sealy, and will cooperate with Sealy in every way possible to carry out the provisions of this contract and to secure the best possible results in carrying out this and other similar contracts.

[fol. 1208E]

Inferior Products

17. Manufacturer shall conduct its business under this contract in an efficient and business-like manner and shall use its best efforts to enhance the popularity of Sealy Products and to create a greater demand for said products. To that end, it will manufacture and sell said products strictly in accordance with this contract and will pay to Sealy, on request, the full retail price of any Sealy Product, sold by it to any purchaser, on the production of evidence that said product was not made in accordance with this contract, or that it was mislabeled or misbranded, or that, in the manufacture of it, inferior materials or workmanship were used, so that Sealy may replace any such product, which Sealy engages to do upon payment as aforesaid.

Price Control by Sealy

18. Sealy believes that the good will of Sealy Products will be seriously damaged and their effective distribution interfered with unless they can be sold at prices which insure reasonable profits. To the end that price cutting on Sealy Products may be prevented, Sealy, after considering the manufacturing and marketing conditions of Manufacturer, may suggest to Manufacturer the minimum price at which, in its opinion, each item of Sealy Products manufactured under this contract should be sold by Manufacturer. Sealy may from time to time change such minimum price suggestions and shall notify Manufacturer in writing of all such changes. Failure of Manufacturer to observe said minimum prices in any instance shall give Sealy the right to terminate this contract, after the fact of such failure is determined by arbitration as herein provided for, but such failure on part of Manufacturer shall not give Sealy any right to damages or other right against Manufacturer.

Records and Reports of Manufacturer

19. Manufacturer shall keep detailed, accurate, and complete records and accounts of all Sealy Products made in its territory during each month under this contract, and shall give to Sealy or its authorized representatives free [fol. 1209E] access to all of said records and accounts and

the right to audit and make copies of and statements from said records and accounts, at any and all reasonable times. Manufacturer shall make up and send to Sealy, on or before the fifteenth (15th) day of each month, a true and complete report of all of said products made in its territory during the preceding month.

Trade-Marks, Trade Names and Labels

20. No Sealy Products shall be sold by Manufacturer without having affixed to them a Sealy label embodying a Sealy trade mark or trade name. No Sealy trade-mark or trade name shall be affixed to a Sealy Product or appear thereon other than by a Sealy Label. All Sealy Labels shall be in the form prescribed by Sealy. No Sealy Label shall be affixed to any product other than a Sealy Product, as herein defined. Sealy Labels shall be obtained by Manufacturer in the following manner and not otherwise.

Sealy will designate a person or company to furnish Sealy Labels to Manufacturer. Manufacturer, desiring Sealy Labels, shall send to Sealy, in duplicate, a regular, duly executed order on the said, designated label manufacturer or distributor for the amount and kind of Sealy Labels desired, together with a check to the order of Sealy in an amount equal to the total of the sums required to be paid for said labels ordered under the terms of paragraph 21 hereof. When these conditions are complied with, Sealy will promptly transmit the original order to the designated label manufacturer or distributor for fulfillment. Manufacturer will then pay the cost of the labels direct to the label manufacturer or distributor. Manufacturer specifically agrees that it will neither order Sealy labels directly from the designated label manufacturer or distributor, nor obtain Sealy labels in any manner whatsoever other than that herein prescribed.

Manufacturer's order for any Sealy Labels under this paragraph shall be for a quantity of not less than fifty labels of the particular class ordered, as the same are classified in paragraph 21 hereof, and if labels of more than one class are ordered, the order shall be for a minimum of fifty [fol. 1210E] labels of each class of labels ordered.

21. Manufacturer shall pay to Sealy, by the procedure prescribed in paragraph 20 hereof, as consideration under

this contract, the following amount for Sealy labels ordered under the provisions of said paragraph 20:

Labels for mattresses or upholstered box springs:

Class I	Selling at wholesale for	\$10.75 or less	.25¢ each
Class II	" " " from	10.75 to \$13.00	.35¢ "
Class III	" " " " "	13.01 to 15.50	.50¢ "
Class IV	" " " " "	15.51 to 17.75	.75¢ "
Class V	" " " " "	17.76 to 21.00	\$1.00 "
Class VI	" " " " "	21.01 and up	1.50 "

Labels for Studio Couches:

Class I	Selling at wholesale for	\$16.00 or less	.25¢ each
Class II	" " " from	16.01 to \$20.00	.35¢ "
Class III	" " " " "	20.01 to 25.00	.50¢ "
Class IV	" " " " "	25.01 to 30.00	.75¢ "
Class V	" " " " "	30.01 to 35.00	\$1.00 "
Class VI	" " " " "	35.01 and up	1.50 "

Labels for Bed Springs:

Class I	Selling at any price	.15¢ each
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Labels for Pillows and Cushions:

If Manufacturer manufactures and/or sells pillows and/or cushions under this contract, Sealy shall have the right to set the label charges for the same.

Minimum Consideration

22. (a) Manufacturer agrees to pay to Sealy for each month during which this contract is in effect, a minimum consideration of \$100.00 per month for the first six months immediately following the effective date of this contract; \$125.00 per month for the next six months; \$150.00 per month for the next six months; \$150.00 per month for the next six months; \$150.00 Per month for each month thereafter.

[fol. 1211E] (b) However, the amount of this minimum consideration due and payable for any such month shall be reduced by the amount paid for labels during said month at the rates and under the terms of paragraph 21 hereof, and if the amount so paid for labels exceeds the minimum consideration, no minimum shall be due and payable for said month.

Carry-Over Credits

(c) Not later than the fifteenth day immediately following the end of the first month after the effective date of this contract, and not later than the fifteenth day immediately following the end of each and every such month thereafter, Manufacturer shall pay to Sealy the amounts becoming due and payable under this paragraph. However, at the end of each six months following the effective date of this contract, or at the end of any lesser period in the event of a termination of this contract under the provisions hereof, if the amount paid to Sealy by Manufacturer during such period under the terms of paragraph 21 of this paragraph exceeds the product of the minimum amount payable per month under this contract times the number of months contained in said period, then Manufacturer shall be entitled to a credit in the total amount of any minimum payment or payments made by it under the provisions of Sections (a) or (b) of this paragraph during such period, but not to exceed the difference between the total amount paid under the terms of paragraph 21 and of this paragraph, and the product of the minimum amount payable per month times the number of months contained in said period. This credit shall be applied, in Manufacturer's discretion, either as a credit on future purchases of Sealy labels, or on a minimum payment or payments becoming due and payable under the terms of this paragraph. In the event this contract is terminated while such credit still stands in favor of Manufacturer, then Sealy shall pay the amount of the same to Manufacturer, but if there is any indebtedness [fol. 1212E] then owing from Manufacturer to Sealy, then Sealy shall have the right to apply the said credit to said indebtedness.

Voting Trust

23. Manufacturer agrees, as part of the consideration of this contract, to become a party to a Voting Trust Agreement, a true and correct copy of which is attached hereto and marked "Exhibit B", and to deposit 60% of its Sealy stock with the Voting Trustee named therein, and otherwise comply with the terms thereof, in order that the purposes and plan of this and similar contracts may be properly

executed, such Voting Trust being deemed necessary to the successful operation of said contracts and to the success of Sealy Incorporated. However, this contract and said Voting Trust Agreement shall be deemed separable, and invalidity of said Voting Trust shall not affect this agreement.

**Transfers of Sealy Stock, Option in Sealy to Buy
Manufacturer's Stock**

24. On each stock-certificate or voting trustees' certificate for Sealy stock issued to Manufacturer, there shall be stamped or printed a proper notation showing that it is issued and held subject to the provisions of this contract. If this contract is terminated under any of its provisions, or if Manufacturer shall at any time desire to sell or transfer all or part of its Sealy stock or voting trustees' certificates, other than at the request of Sealy as provided for in paragraph 25 hereof, without an assignment to the buyer or transferee of all its rights under this contract in said entire exclusive territory, Sealy shall have an option for thirty (30) days to purchase the stock or voting trust certificates which Manufacturer desires to sell or transfer, or owns—in the case of termination, at the price of \$100.00 per share. But, if Manufacturer shall have in any such case a bona fide offer or offers to buy all or part of said stock, or certificates, then it shall furnish to Sealy satisfactory evidence of said offer or offers with the names of the parties making the same and the complete terms thereof, and Sealy in such case shall have an option for 30 days to purchase said stock or certificates at the highest price at which Manufacturer has a bona fide offer to buy, whether such offer be for more or less than \$100.00 per share. Manufacturer must give notice, as defined in this agreement, to Sealy of its desire to sell or transfer its said Sealy stock or its voting trustees' certificates representing the same, and of such offers as it has, and any sale or transfer covered by this paragraph without such notice to Sealy shall be null and void. The 30 day option period shall run from the date of such notice to Sealy. If Manufacturer does not sell said stock or the voting trustees' certificates representing the same to the

party making the said offer within 30 days after the expiration of the said option, then said stock shall be and remain subject to the terms of this paragraph. In order to retain its rights under this contract, Manufacturer must retain at least five shares of its stock in Sealy or Voting Trustees' certificates representing the same.

Manufacturers's Agreement to Transfer Stock in Certain Cases

25. As part of the consideration of this contract, Manufacturer agrees to sell and transfer, at the price of \$100.00 per share, at the request of Sealy, at least three shares but not in excess of six shares of Sealy stock (not voting trustees' certificates representing the same), the exact number to be determined by Sealy, to any person, association, partnership, or corporation with whom Sealy, after the execution of this contract, contracts for the manufacture and sale of Sealy Products within Sealy Territory " " as shown and delimited on Sealy territories [fol. 1214E] Map No. 2, attached hereto, made part hereof, and marked Exhibit "C"

Termination Without Arbitration

26. In the event Manufacturer shall become insolvent, present a voluntary petition in bankruptcy or be involuntarily adjudicated a bankrupt, shall suspend its business, shall make an assignment for the benefit of creditors or shall suffer a receiver to be appointed, then automatically and simultaneously this contract shall be terminated.

Arbitration

27. All claims, demands, disputes, controversies, differences or misunderstandings between the parties hereto, arising under, through or by virtue of this agreement, except the matters referred to in the preceding paragraph, shall be submitted to arbitration before the arbitrators hereinafter provided for according to the procedure hereinafter prescribed. Each of the parties hereto, in case of an arbitration, shall select one arbitrator and the two arbitrators so selected shall select a third arbitrator. The

three so selected shall act as an arbitration board and shall hear and determine all matters and questions then involved. The party desiring an arbitration at any time shall give notice to the other party, stating the arbitrator selected by it and his address, and stating concisely in its complaint all matters to be arbitrated and its contentions in connection therewith. The failure of the party so notified to inform the first party of the name of its arbitrator and his address within 30 days thereafter, and to serve an answer stating its contentions in the matter on the first party within said time shall be an admission of the matters set forth in the complaint and the matters shall conclusively be considered as having been settled in favor of the complainant. The parties hereto shall serve on the Board copies of the statements of their contentions within 10 days after the Arbitration Board has been selected. The arbitration Board may make its own investigation, and may hear both [fol. 1215E] sides orally or in writing. Failure by either of the parties to take the steps required by this paragraph shall automatically act as an adjudication against it. A decision by the majority of the arbitrators shall be final, binding and conclusive. If the arbitrators find as a fact that a party has breached this agreement, it shall be optional with the other party to terminate this agreement, but this right of termination shall not preclude any other remedy for breach of contract in lieu thereof. The arbitrators in their decision may assess the costs of the arbitration proceedings against any or all parties thereto.

Termination No Release From Obligations Already Accrued

28. No termination of this contract shall release Manufacturer or Sealy from any obligation on its part which has accrued up to the time of said termination. Failure of Sealy to notify Manufacturer of any breach of this contract, or any default under it, shall not constitute a waiver of any such breach or default, or a waiver of the right of Sealy to terminate this contract at a later date on account thereof, or on account of any other subsequent breach or default.

Manufacturer Not Sealy's Agent

29. Manufacturer shall have no authority to bind Sealy upon any contract or obligation whatsoever. Nothing in this contract shall be construed as constituting Manufacturer an agent of Sealy for any purpose. Sealy shall not be liable for any acts or omissions of Manufacturer, except as elsewhere herein may be expressly provided for, for any unsatisfactory merchandise made or sold by Manufacturer, or for any misrepresentations made by Manufacturer.

Notices

30. All notices provided for or to be given under this contract shall be in writing and shall be given by registered mail to or served personally on the party to be notified. [fol. 1216E] When sent by registered mail, it shall be considered to have been given at the time when said registered mail notice should have been delivered, in the regular course of the transportation and delivery of such mail from the place which it was registered to its destination.

Assignment of Rights Under This Contract

31. Manufacturer shall not assign or transfer its rights under this contract in the whole of the territory in which it has such rights, without the consent of Sealy. Manufacturer shall not have the power to assign or transfer its rights under this contract within a part of the territory herein granted. This contract is personal with Manufacturer and cannot be assigned or transferred in whole or in part by act of Manufacturer or by operation of law, without the consent of Sealy.

Effective Date.

32. This contract shall not become binding on either of the parties hereto until a similar contract has been executed by each of the stockholders or voting trustees' certificate holders of Sealy now manufacturing and selling Sealy Products.

Termination

33. This contract may be terminated by Manufacturer for any reason by giving six months notice to Sealy of its intention so to terminate. Sealy may terminate this contract without advance notice but only because of a breach of this contract by Manufacturer. The question whether there has been a breach shall first, however, be determined by arbitration under the provisions of paragraph 27 hereof. If this contract is not terminated by either of the aforesaid methods or under the circumstances of paragraph 26 hereof, then it shall remain in full effect until it is terminated by mutual consent of the parties hereto.

[fol. 1217E] 34. This contract shall be deemed separable and if any portion hereof shall be held invalid for any reason, the remainder shall not thereby be invalidated but shall remain in full force and effect.

35. This contract is executed in duplicate.

In Witness Whereof, the parties by their duly authorized officers or agents, have caused this agreement to be executed, intending to be legally bound thereby, the day and year first above written.

Sealy, Incorporated, By "H. E. Wolf", President.

Attest:

"R. G. Culp", Asst. Secretary.

The Colorado Mattress Manufacturing Company, By
Morris Stein, Morris Nierenberg.

_____, _____

[fol. 1218E]

EXHIBIT A

Specifications for Sealy Mattresses

Sealy Fastasleep

Cover	—6 Oz. Blue & White Stripe, 16¢ to 18¢ Yd.
Burlap	—8 Ounce
Filling	—35 Pounds Felt (Good Millrun Linters)
Vents	—Eight
Buttons	—78 4 x 6 Diamond Tuft
Tailoring	—Taped Roll Edge Taped Handles
Unit	—Spring Wire 10 x 18 180 coils 36 Outside Coils Lengthwise (Outside Edge) 40 Center Coils, 5 x 8, 14 Gauge Balance of Unit, 13 x 8, 104 Coils 14½ Gauge
Packing Marks	—200 Test Carton —Sealy Fastasleep Selling Price..... \$10.75 Resale Price..... 19.75

Sealy Truease

Cover	—Panel Damask, 32¢ to 35¢ Yd. Border to Match
Burlap	—8 Ounce
Filling	—35 Pounds Felt (Millrun Linters)
Vents	—Eight
Buttons	—78 4 x 6 Diamond Tuft
Tailoring	—Mercerized-Tape Edge Inside Roll Edge Tape Handles
Unit	—Spring Wire 10 x 19 190 Coils 38 Outside Coils Lengthwise (Outside Edge) 40 Center Coils, 5 x 8, 14 Gauge Balance of Unit, 14 x 8, 112 Coils 14½ gauge
Packing	—200 Test Carton

Marks

—Sealy Truease		
Selling Price.....		\$13.00
Resale Price.....		24.50
P.M.....		.50

Sealy Natural Rest

Cover

- Panel Damask, 40¢ to 45¢ Yd.
- Prebuilt Border, Recco #3319

Filling

- 2 56 x 77 2½ Oz. Sisal Pads
- 27 Lbs. Felt (Millrun Linters)

Vents

- Eight

Buttons

- 78 4 x 6 Diamond Tuft

Tailoring

- Mercerized Tape Edge
- Inside Roll Edge
- Taped Handles

Unit

- Spring Wire 12 x 20 240 Coils
- 40 Outside Edge Coils Lengthwise
- 60 Center Coils, 6 x 10, 15 Gauge,
- with close centers
- Balance of Unit, 15 gauge coils,
- Reg. Centers, 14 x 10,
- 140 Coils

Packing

- 200 Test Carton

Marks

—Sealy Natural Rest		
Selling Price.....		\$15.50
Resale Price.....		29.50
P.M.....		.75

[rol. 1219E]

Sealy Airvent

Cover

- Panel Damask, 55¢ to 60¢ Yd.
- Prebuilt Border, Recco 3465

Filling

- 2 56 x 77 2½ Oz. Sisal Pads
- 27 Lbs. Felt (Fancy 1st Cut Linters)

Vents

- Eight

Buttons

- 78 4 x 6 Diamond

Tailoring

- Mercerized Tape Edge
- Inside Roll Enge
- Taped Handles

Unit —Spring Wire 12 x 20 240 Coils
 40 Outside Edge Coils Lengthwise
 60 Center Coils, 6 x 10, 15 Gauge
 with close centers
 Balance of Unit, 15 Gauge Coils,
 Reg. Centers, 14 x 10.
 140 Coils

**Packing
 Marks**

—200 Test Carton
 —Sealy Airvent

Selling Price..... \$17.75
 Resale Price..... 34.50
 P.M..... 1.00

Sealy Rest Tuftless

Cover

—Panel Damask, 55¢ to 60¢ Yd.
 Prebuilt Border, Recco # 3465

Filling

—2 50 x 72 Nukraft Pads made by
 the B. F. Goodrich Co.

Unit

20 Lbs. Felt (Fancy 1st. Cut Linters)
 —Spring Wire 12 x 20 240 Coils
 40 Outside Edge Coils Lengthwise
 60 Center Coils, 6 x 10, 15 Gauge,
 with close centers
 Balance of Unit, 15 Gauge Coils
 Reg. Centers, 14 x 10,
 140 Coils

**Packing
 Vents**

—200 Test Carton

Tailoring

—Eight

—Mercerized Tape Edge
 Inside Roll Edge
 Taped Handles

Marks

—Sealy Rest Tuftless

Selling Price..... \$21.00
 Resale Price..... 39.50
 P.M..... 1.00

Sealy Enchanted Nights

Cover

—Panel Damask, 55¢ to 60¢ Yd.
 Prebuilt Border, Recco 3319-B

Filling

—Inside Sheeting Cover
 32 Lbs. Felt (Fancy 1st. Cut Linters)

1110

Unit	—Muslin Pocket Coil, 15½ Gauge Spring Wire Coils 5½" High 3" Top and Bottom 5 Full Turns Tied 4 Ways Top and Bottom Approximate Weight per Coil ¾ Ounces 26 x 19 494 Coils	
Vents	—Eight	
Buttons	—78 4 x 6 Diamond Tuft	
Tailoring	—Mercerized Tape Edge Inside Roll Edge Taped Handles	
Packing	—200 Test Carton	
Marks	—Sealy Enchanted Nights	
	Selling Price.....	\$21.00
	Resale Price.....	39.50
	P.M.....	1.00

[fol. 1220E]

Sealy Super Rest

Cover	—Panel Damask, 70¢ to 75¢ Yd. Prebuilt Border, Recco 3191-B	
Filling	—2 50 x 72 Nukraft Pads made by the B. F. Goodrich Co. 15 Lbs. Staple Cotton, Garnetted, 4% Lambs Wool	
Unit	—Spring Wire 14 x 22 308 Coils 44 Outside Edge Coils Lengthwise 72 Center Coils, 6 x 12, 15 Gauge, with close centers Balance of Unit, 15 Gauge, with regular center, 16 x 12, 192 Coils	
Vents	—Eight	
Finish	—Mercerized Tape Edge Inside Roll Edge Taped Handles	
Packing	—200 Test Carton	
Marks	—Sealy Super Rest	
	Selling Price.....	\$25.75
	Resale Price.....	49.50
	P.M.....	2.00

Sealy Tuftless

Cover	—Panel Damask, or All-Over Damask	
	55¢ to 60¢ Yd.	
Filling	—Strict Middling Harsh $\frac{7}{8}$ " Staple	
	Cotton or better, Ginned or	
	Garnetted	
Tailoring	—Plain Tape Edge	
	Taped Handles	
	No Tufts	
Weight	—Without Ticking—Full 50 Lbs.	
Packing	—200 Test Carton	
Marks	—Sealy Tuftless	
	Selling Price.....	\$21.00
	Resale Price.....	39.50
	P.M.....	1.00

[fol. 1221E] STATE OF COLORADO,
City and county of Denver, ss:

MORRIS STEIN, being first duly sworn, upon oath deposes and says that he has read the above and foregoing "Manufacturer's Contract", and that he knows of his own knowledge that it is a true and correct copy of the original contract in the possession of The Colorado Mattress Manufacturing Company, at 2363 Larimer Street, Denver, Colorado.

Morris Stein.

Subscribed and sworn to before me this 5th day of January, 1944. Witness my hand and notarial seal.

My commission expires December 3, 1947.

Anne G. Perlmutter, Notary Public.

[fol. 1222E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1018

MANUFACTURER'S CONTRACT

This Contract, made at Pittsburgh, in the State of Pennsylvania, this 15 day of December, 1937, by Sealy, Incorporated, a Delaware corporation, hereinafter called "Sealy", and Sealy Mattress Company of Northern California a California corporation, or a partnership, or an individual, having a regular place of business at Oakland in the State of California, hereinafter called "Manufacturer",

Witnesseth:

Whereas: Sealy has certain trade-marks, trade names, methods, processes, specifications, and good will, which are of distinct value in the manufacture and sale of mattresses, studio couches, bed springs, bedding and similar products; and

Whereas, Manufacturer is a stockholder in Sealy, and it and other stockholders in Sealy are now engaged in the business of manufacturing and selling mattresses, studio couches, bedding, bed springs and similar products, and have adequate and suitable facilities for manufacturing and selling Sealy Products; and

Whereas, each and every such stockholder in Sealy desires to manufacture and sell, in addition to its present products, Sealy Products, with an exclusive territory and under the terms and conditions hereinafter set forth; and

Whereas, Sealy desires to assign exclusive territories to such stockholders and to contract with them, as independent contractors, to manufacture and sell Sealy Products therein, [fol. 1223E] Now, Therefore, in consideration of the promises and of the mutual agreements herein contained, it is hereby agreed between the parties hereto as follows:

Definition of "Sealy Products"

1. As used throughout this contract, the term "Sealy Products" shall mean all mattresses, studio couches, bed springs, box springs, pillows and cushions, manufactured,

or to be manufactured, and/or sold, bearing or having affixed thereto in any manner, the Sealy trade-name, and/or trade marks, or in any other fashion the work and name "Sealy".

Right to Manufacture and Sell

2. Manufacturer will, as an independent contractor and at its own expense, during the term of this contract, manufacture Sealy Products, to-wit: Mattresses, studie couches, bed springs, box-springs, pillows and cushions, and will do so under and strictly in accordance with Sealy patents, methods, processes, exclusive rights, licenses, and specifications, now owned or controlled or hereafter acquired or controlled by Sealy, and sell the same within the territory hereinafter defined, under the Sealy trade name and trade-marks, so that the market and demand for said Sealy Products in the territory hereby allotted to Manufacturer will be satisfied so far as it is reasonably possible to do so, and Manufacturer further agrees it will use its best efforts to enhance the popularity and demand for said Sealy Products in the said territory.

Specifications

3. A true and correct copy of the specifications for the manufacture of Sealy Products is attached hereto, made a part hereof and marked "Exhibit A". Manufacturer agrees to manufacture all Sealy Products strictly in accordance with said specifications. At any time or times the Board of Directors of Sealy may, by a two-thirds vote of all its members, change said specifications and/or promulgate specifications for additional Sealy Products. When new [fol. 1224E] specifications are thus prepared or the specifications are thus changed for any Sealy Product and notice thereof, as defined in this agreement, is given to Manufacturer, such new or changed specifications shall become a part of this contract and after ninety (90) days have elapsed after said notice Manufacturer shall manufacture each Sealy Product strictly in accordance with said new or changed specifications.

4. Manufacturer also agrees that all materials, patents, designs, specifications, copyrights, processes, trade-marks, trade names and/or methods and/or the right to use the same, that are or shall become exclusive to or the property

of Sealy, or which Sealy controls or has interest in, now or in the future while this contract is in force, shall be used only in the manufacture and sale of Sealy Products.

Methods and Processes

5. Sealy agrees to furnish Manufacturer, upon demand, full information concerning its methods and processes, together with technical advice and directions as to the best methods of manufacturing Sealy Products. Manufacturer agrees to manufacture Sealy Products strictly and faithfully in accordance with the processes, methods, and directions from time to time furnished by Sealy. Said methods, processes and directions may be changed from time to time by Sealy or new ones promulgated by a two-thirds (2/3) vote of all the members of the Sealy Board of Directors. Said new or changed methods, processes and directions shall become effective as in the case of new or changed specifications.

Supervision by Sealy

6. Sealy shall exercise supervision and control over the manufacture of all Sealy Products by Manufacturer so as to insure that said products are made in conformity with Sealy specifications, processes, methods, directions and [fol. 1225E] patents and with the provisions of this contract. To enable Sealy to exercise such supervision and control, Manufacturer will furnish to Sealy, on demand, specimens of products manufactured under this contract and samples of the materials used and will afford duly accredited representatives of Sealy access to its factory and warehouses at reasonable times.

Right to Advertise

7. Manufacturer may advertise Sealy Products by means embodying or employing Sealy trade names, trade-marks, and labels. However, Manufacturer will discontinue any advertising of Sealy Products which is objectionable to Sealy, on notice by Sealy.

Patent, Trade-Mark Infringement

8. Sealy agrees to defend at its expense any and all suits against Manufacturer for or on account of any al-

leged infringement, while this contract is in force, of any patent, copyright, trade-mark, or trade-name by the manufacture or sale by Manufacturer, in accordance with the provisions of this contract, of any Sealy Products, and to pay any judgments or decrees recovered in law or in equity against Manufacturer upon such claims or any of them.

9. Sealy agrees not to sue Manufacturer for infringement of any of its patents, copyrights, trade-names, trade-marks, methods, or processes by reason of any act committed by Manufacturer during the term of this contract, and in accordance and compliance with it.

Use of Name "Sealy" Admission of Sealy's Rights

10. Manufacturer may use the word "Sealy" in its corporate or business name and as a trade-mark or trade-name, in the form prescribed by Sealy, on all Sealy Products made by it during, but only during, the life of and while fully complying with this contract. On any termination or breach of this contract, all rights given to Manufacturer [fol. 1226E] hereunder shall cease and Manufacturer shall forthwith drop the name "Sealy" from its corporate or business name and from its products, and shall not thereafter use the word "Sealy" or any of the "Sealy" patents, copyrights, trade-marks, trade names or labels. Manufacturer admits and concedes that Sealy is the full and complete owner, in its own name and right, of the patents, copyrights, trade-marks and trade names, under and by which Sealy Products have been and are to be manufactured, and disclaims any interest therein and any right thereto or any right to manufacture and/or sell any of said products except in accordance with this contract. Manufacturer expressly agrees that it will comply with the above provisions even if it has heretofore used the word "Sealy" in its name and/or in its business and/or on its products.

Territory

11. The exclusive territory hereby allotted to Manufacturer is as follows:

All of the State of California included within the following boundary lines:

Beginning at Fort Rose on the Pacific Ocean thence to Lytton to Middletown to Arbuckle to Knights Landing to Woodland to Davis to Rio Vista to Byron to Mountain House to Altamont to Livermore to Hollister to The Pinnacles National Monument to Soledad to Big Spur on the Pacific Ocean, and including all of the said towns except Big Sur and Livermore.

[fol. 1227E] Release of Sealy Territory

12. As part of the consideration of this contract, and in consideration of the like and mutual releases by several other stockholder-manufacturers of Sealy which they and Manufacturer believe to be for their individual and mutual benefit and to the best interests of Sealy, Incorporated, Manufacturer agrees to relinquish and release, and does relinquish and release to Sealy, in the whole and every part of Sealy Territory " ", as shown on Sealy Territories Map #2, attached hereto, made part hereof and marked "Exhibit C", all of its claims and rights of every nature to manufacture and/or sell Sealy Products and all rights and claims of every nature to in any way use or make use of the Sealy trade names, trade-marks, labels, copyrights, patents and/or exclusive rights now owned or controlled or hereafter owned or controlled by Sealy.

Approval of Manufacturers in Certain Cases

13. After execution of this contract, and as long as it is in force, Sealy will not contract with or grant any rights to any person, partnership, association or corporation for the manufacture and/or sale of Sealy Products within a part or the whole of Sealy Territory " " as the same is shown and delimited on Sealy Territories Map #2, attached hereto, made part hereof and marked "Exhibit C", without the approval by the Board of Directors of Sealy of the qualifications of said proposed person,

partnership, association or corporation to manufacture and sell Sealy Products.

This paragraph not a part of this Agreement.

Sealy, Incorporated, By —, —. Sealy Mattress Co. of N. Cal. By Seniel Ostrow.

Sales in or Shipments to Manufacturer's Territory

14. Sealy will not manufacture nor sell, nor will it, without the consent of Manufacturer, contract with or permit any other individual, partnership, association or corporation, to manufacture, or sell Sealy Products within the exclusive territory above set aside to Manufacturer, so long as this contract is in force. Sealy shall pay to Manufacturer, upon demand, as liquidated damages, \$10.00 for each mattress, studio couch or other Sealy Product sold or [fol. 1228E] shipped into Manufacturer's exclusive territory by Sealy, and \$10.00 less the cost of collection of the same, for each such article sold or shipped into Manufacturer's exclusive territory by any person, partnership, association or individual, which has in effect a contract with Sealy, identical or similar to this one; provided, that Sealy has succeeded in collecting the said \$10.00 for each such article from said person, partnership, association or corporation.

Restriction Upon Sales by Manufacturer

15. Manufacturer shall not sell, ship or deliver Sealy Products outside of its exclusive territory, nor shall it make any sale of Sealy Products, if it knows that the purchaser intends to resell, deliver or ship the same for resale out of said exclusive territory, nor shall it sell, ship or deliver any Sealy Products to any mail order house, without Sealy's written consent. For each violation of the next preceding provision, Manufacturer shall pay to Sealy, upon demand, the sum of \$10.00 for each mattress, studio couch or other Sealy Product sold in violation thereof. On notice from Sealy, Manufacturer will promptly discontinue making such sales and/or shipments.

Manufacturer's Good Faith

16. Manufacturer shall not aid, abet or assist any other corporation, partnership or individual to do anything which might in any way constitute a violation of any provision of this contract or an infringement of any of the patents, copyrights, trade-marks and trade names of Sealy. Manufacturer will not sell or deliver to others, or aid or assist others in the use of, any of the Sealy labels, brands, or materials, without the written consent of Sealy, and will cooperate with Sealy in every way possible to carry out the provisions of this contract and to secure the best possible results in carrying out this and other similar contracts.

[fol. 1229E]

Inferior Products

17. Manufacturer shall conduct its business under this contract in an efficient and business-like manner and shall use its best efforts to enhance the popularity of Sealy Products and to create a greater demand for said products. To that end, it will manufacture and sell said products strictly in accordance with this contract and will pay to Sealy, on request, the full retail price of any Sealy Product, sold by it to any purchaser, on the production of evidence that said product was not made in accordance with this contract, or that it was mislabeled or misbranded, or that, in the manufacture of it, inferior materials or workmanship were used, so that Sealy may replace any such product, which Sealy engages to do upon payment as aforesaid.

Price Control by Sealy

18. Sealy believes that the good will of Sealy Products will be seriously damaged and their effective distribution interfered with unless they can be sold at prices which insure reasonable profits. To the end that price cutting on Sealy Products may be prevented, Sealy, after considering the manufacturing and marketing conditions of Manufacturer, may suggest to Manufacturer the minimum price at which, in its opinion, each item of Sealy Products manufactured under this contract should be sold by Manufacturer. Sealy may from time to time change such minimum price suggestions and shall notify Manufacturer in writing

of all such changes. Failure of Manufacturer to observe said minimum prices in any instance shall give Sealy the right to terminate this contract, after the fact of such failure is determined by arbitration as herein provided for, but such failure on part of Manufacturer shall not give Sealy any right to damages or other right against Manufacturer.

Records and Reports of Manufacturer

19. Manufacturer shall keep detailed, accurate, and complete records and accounts of all Sealy Products made in its territory during each month under this contract, and shall give to Sealy or its authorized representatives free [fol. 1230E] access to all of said records and accounts and the right to audit and make copies of and statements from said records and accounts, at any and all reasonable times. Manufacturer shall make up and send to Sealy, on or before the fifteenth (15th) day of each month, a true and complete report of all of said products made in its territory during the preceding month.

Trade-Marks, Trade Names and Labels

20. No Sealy Products shall be sold by Manufacturer without having affixed to them a Sealy label embodying a Sealy trade-mark or trade name. No Sealy trade-mark or trade-name shall be affixed to a Sealy Product or appear thereon other than by a Sealy Label. All Sealy Labels shall be in the form prescribed by Sealy. No Sealy Label shall be affixed to any product other than a Sealy Product, as herein defined. Sealy Labels shall be obtained by Manufacturer in the following manner and not otherwise:

Sealy will designate a person or company to furnish Sealy Labels to Manufacturer. Manufacturer, desiring Sealy Labels, shall send to Sealy, in duplicate, a regular, duly executed order on the said designated label manufacturer or distributor for the amount and kind of Sealy Labels desired, together with a check to the order of Sealy in an amount equal to the total of the sums required to be paid for said labels ordered under the terms of paragraph 21 hereof. When these conditions are complied with, Sealy will promptly transmit the original order to the designated label manufacturer or distributor for fulfillment. Manu-

facturer will then pay the cost of the labels direct to the label manufacturer or distributor. Manufacturer specifically agrees that it will neither order Sealy labels directly from the designated label manufacturer or distributor, nor obtain Sealy Labels in any manner whatsoever other than that herein prescribed.

Manufacturer's order for any Sealy Labels under this paragraph shall be for a quantity of not less than fifty labels of the particular class ordered, as the same are classified in paragraph 21 hereof, and if labels of more than one class are ordered, the order shall be for a minimum [fol. 1231E] of fifty labels of each class of labels ordered.

21. Manufacturer shall pay to Sealy, by the procedure prescribed in paragraph 20 hereof, as consideration under this contract, the following amounts for Sealy labels ordered under the provisions of said paragraph 20:

Labels for mattresses or upholstered box springs:

Class I	Selling at wholesale for	\$10.75 or less	.25¢ each
Class II	" " " from	10.76 to \$13.00	.35¢ "
Class III	" " " "	13.01 to 15.50	.50¢ "
Class IV	" " " "	15.51 to 17.75	.75¢ "
Class V	" " " "	17.76 to 21.00	\$1.00 "
Class VI	" " " for	21.01 and up	\$1.50 "

Labels for Studio Couches:

Class I	Selling at wholesale for	\$16.00 or less	.25¢ each
Class II	" " " from	16.01 to \$20.00	.35¢ "
Class III	" " " "	20.01 to 25.00	.50¢ "
Class IV	" " " "	25.01 to 30.00	.75¢ "
Class V	" " " "	30.01 to 35.00	\$1.00 "
Class VI	" " " for	35.01 and up	\$1.50 "

Labels for Bed Springs:

Class I	Selling at any price	.15¢ each
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Labels for Pillows and Cushions:

If Manufacturer manufactures and/or sells pillows and/or cushions under this contract, Sealy shall have the right to set the label charges for the same.

Minimum Consideration

22. (a) Manufacturer agrees to pay to Sealy for each month during which this contract is in effect, a minimum consideration of \$100.00 per month for the first six months

immediately following the effective date of this contract; \$125.00 per month for the next six months; \$150.00 per month for each month thereafter. However, so long as Mr. Seniel Ostrow is the legal and beneficial owner of more than 50% of the capital stock of Manufacturer, and so long as he pays the royalties and minimum consideration required to be paid by him to Sealy by a contract similar to this one, dated September 1, 1936, between said Ostrow and Sealy, Manufacturer shall not be obligated to make the payments required by this paragraph, but said Manufacturer shall be so obligated as soon as and continue as long as any default by said Ostrow under the above provisions exists.

[fol. 1232E] (b) However, the amount of this minimum consideration due and payable for any such month shall be reduced by the amount paid for labels during said month at the rates and under the terms of paragraph 21 hereof, and if the amount so paid for labels exceeds the minimum consideration, no minimum shall be due and payable for said month.

Carry-Over Credits

(c) Not later than the fifteenth day immediately following the end of the first month after the effective date of this contract, and not later than the fifteenth day immediately following the end of each and every such month thereafter, Manufacturer shall pay to Sealy the amounts becoming due and payable under this paragraph. However, at the end of each six months following the effective date of this contract, or at the end of any lesser period in the event of a termination of this contract under the provisions hereof, if the amount paid to Sealy by Manufacturer during such period under the terms of paragraph 21 and of this paragraph exceeds the product of the minimum amount payable per month under this contract times the number of months contained in said period, then Manufacturer shall be entitled to a credit in the total amount of any minimum payment or payments made by it under the provisions of Sections (a) or (b) of this paragraph during such period, but not to exceed the difference between the total amount paid under the terms of paragraph 21 and of this paragraph, and the product of the minimum amount payable per month times the number of months contained in said period. This

credit shall be applied, in Manufacturer's discretion, either as a credit on future purchases of Sealy labels, or on a minimum payment or payments becoming due and payable under the terms of this paragraph. In the event this contract is terminated while such credit still stands in favor of Manufacturer, then Sealy shall pay the amount of the same to Manufacturer, but if there is any indebtedness then [fol. 1233E] owing from Manufacturer to Sealy, then Sealy shall have the right to apply the said credit to said indebtedness.

Voting Trust

23. Manufacturer agrees, as part of the consideration of this contract, to become a party to a Voting Trust Agreement, a true and correct copy of which is attached hereto and marked "Exhibit B", and to deposit 60% of its Sealy stock with the Voting Trustee named therein, and otherwise comply with the terms thereof, in order that the purposes and plan of this and similar contracts may be properly executed, such Voting Trust being deemed necessary to the successful operation of said contracts and to the success of Sealy, Incorporated. However, this contract and said Voting Trust Agreement shall be deemed separable, and invalidity of said Voting Trust shall not affect this agreement.

Transfers of Sealy Stock, Option in Sealy to Buy Manufacturer's Stock

24. On each stock certificate or voting trustees' certificate for Sealy stock issued to Manufacturer, there shall be stamped or printed a proper notation showing that it is issued and held subject to the provisions of this contract. If this contract is terminated under any of its provisions, or if Manufacturer shall at any time desire to sell or transfer all or part of its Sealy stock or voting trustees' certificates, other than at the request of Sealy as provided for in paragraph 25 hereof, without an assignment to the buyer or transferee of all its rights under this contract in said entire exclusive territory, Sealy shall have an option for thirty (30) days to purchase the stock or voting trust certificates which Manufacturer desires to sell or transfer, or owns—in the case of termination, at the price of \$100.00

per share. But, if Manufacturer shall have in any such case a bona fide offer or offers to buy all or part of said stock, or certificates, then it shall furnish to Sealy satisfactory evidence of said offer or offers with the names of the parties making the same and the complete terms thereof, and Sealy in such case shall have an option for 30 days to purchase said stock or certificates at the highest price at which Manufacturer has a bona fide offer to buy, whether such offer be for more or less than \$100.00 per share. Manufacturer must give notice, as defined in this agreement, to Sealy of its desire to sell or transfer its said Sealy stock or its voting trustees' certificates representing the same, and of such offers as it has, and any sale or transfer covered by this paragraph without such notice to Sealy shall be null and void. The 30 day option period shall run from the date of such notice to Sealy. If Manufacturer does not sell said stock or the voting trustees' certificates representing the same to the party making the said offer within 30 days after the expiration of the said option, then said stock shall be and remain subject to the terms of this paragraph. In order to retain its rights under this contract, Manufacturer must retain at least five shares of its stock in Sealy or Voting Trustees' certificates representing the same.

Manufacturer's Agreement to Transfer Stock in Certain Cases

25. As part of the consideration of this contract, Manufacturer agrees to sell and transfer, at the price of \$100.00 per share, at the request of Sealy, at least three shares but not in excess of six shares of Sealy stock (not voting trustees' certificates representing the same), the exact number to be determined by Sealy, to any person, association, partnership, or corporation with whom Sealy, after the execution of this contract, contracts for the manufacture and sale of Sealy Products within Sealy Territory " " as shown and delimited on Sealy territories Map No. 2, attached hereto, made part hereof, and marked [fol. 1235E] Exhibit "C".

This paragraph is not a part of this Agreement.

Sealy, Incorporated, By —, —. Sealy Mattress Co. of N. Cal., By Seniel Ostrow.

Termination Without Arbitration

26. In the event Manufacturer shall become insolvent, present a voluntary petition in bankruptcy or be involuntarily adjudicated a bankrupt, shall suspend its business, shall make an assignment for the benefit of creditors or shall suffer a receiver to be appointed, then automatically and simultaneously this contract shall be terminated.

Arbitration

27. All claims, demands, disputes, controversies, differences or misunderstandings between the parties hereto, arising under, through or by virtue of this agreement, except the matters referred to in the preceding paragraph, shall be submitted to arbitration before the arbitrators hereinafter provided for according to the procedure hereinafter prescribed. Each of the parties hereto, in case of an arbitration, shall select one arbitrator and the two arbitrators so selected shall select a third arbitrator. The three so selected shall act as an arbitration board and shall hear and determine all matters and questions then involved. The party desiring an arbitration at any time shall give notice to the other party, stating the arbitrator selected by it and his address, and stating concisely in its complaint all matters to be arbitrated and its contentions in connection therewith. The failure of the party so notified to inform the first party of the name of its arbitrator and his address within 30 days thereafter, and to serve an answer stating its contentions in the matter on the first party within said time shall be an admission of the matters set forth in the complaint and the matters shall conclusively be considered as having been settled in favor of the complainant. The parties hereto shall serve on the Board copies of the statements of their contentions within 10 days after the Arbitration Board has been selected. The Arbitration Board may make its own investigation, and may hear both sides orally [fol. 1236E] or in writing. Failure by either of the parties to take the steps required by this paragraph shall automatically act as an adjudication against it. A decision by the majority of the arbitrators shall be final, binding and conclusive. If the arbitrators find as a fact that a party has breached this agreement, it shall be optional with the

other party to terminate this agreement, but this right of termination shall not preclude any other remedy for breach of contract in lieu thereof. The arbitrators in their decision may assess the costs of the arbitration proceedings against any or all parties thereto.

Termination No Release From Obligations Already Accrued

28. No termination of this contract shall release Manufacturer or Sealy from any obligation on its part which has accrued up to the time of said termination. Failure of Sealy to notify Manufacturer of any breach of this contract, or any default under it, shall not constitute a waiver of any such breach or default, or a waiver of the right of Sealy to terminate this contract at a later date on account thereof, or on account of any other subsequent breach or default.

Manufacturer Not Sealy's Agent

29. Manufacturer shall have no authority to bind Sealy upon any contract or obligation whatsoever. Nothing in this contract shall be construed as constituting Manufacturer an agent of Sealy for any purpose. Sealy shall not be liable for any acts or omissions of Manufacturer, except as elsewhere herein may be expressly provided for, for any unsatisfactory merchandise made or sold by Manufacturer, or for any misrepresentations made by Manufacturer.

Notices

30. All notices provided for or to be given under this contract shall be in writing and shall be given by registered mail to or served personally on the party to be notified. [fol. 1237E] When sent by registered mail, it shall be considered to have been given at the time when said registered mail notice should have been delivered, in the regular course of the transportation and delivery of such mail from the place which it was registered to its destination.

Assignment of Rights Under this Contract.

31. Manufacturer shall not assign or transfer its rights under this contract in the whole of the territory in which it has such rights, without the consent of Sealy. Manufacturer shall not have the power to assign or transfer its rights under this contract within a part of the territory

herein granted. This contract is personal with Manufacturer and cannot be assigned or transferred in whole or in part by act of Manufacturer or by operation of law, without the consent of Sealy.

Effective Date

32. This contract shall not become binding on either of the parties hereto until a similar contract has been executed by each of the stockholders or voting trustees' certificate holders of Sealy now manufacturing and selling Sealy Products.

Termination

33. This contract may be terminated by Manufacturer for any reason by giving six months notice to Sealy of its intention so to terminate. Sealy may terminate this contract without advance notice but only because of a breach of this contract by Manufacturer. The question whether there has been a breach shall first, however, be determined by arbitration under the provisions of paragraph 27 hereof. If this contract is not terminated by either of the aforesaid methods or under the circumstances of paragraph 26 hereof, then it shall remain in full effect until it is terminated by mutual consent of the parties hereto.

[fol. 1238E] 34. This contract shall be deemed separable and if any portion hereof shall be held invalid for any reason, the remainder shall not thereby be invalidated but shall remain in full force and effect.

35. This contract is executed in duplicate.

In Witness Whereof, the parties by their duly authorized officers or agents, have caused this agreement to be executed, intending to be legally bound thereby, the day and year first above written.

Sealy Incorporated, By W. E. Wolf, President, E. H. Bergmann, Acting President.

Attest:

R. G. Culp, Asst. Secretary.

Sealy Mattress Company of Northern California,
By [Copy illegible], Pres.

[fol. 1239E]

EXHIBIT A

Specifications for Sealy Mattresses

Sealy Fastasleep

Cover	—6 Oz. blue and white stripe
Burlap	—8 Oz.
Filling	—35 lbs. felt (Good Millrun Linters)
Vents	—4
Buttons	—78 4 x 6 Diamond Tuft
Tailoring	—Outside Roll or French Edge, as desired. Cloth handles
Unit	—Spring Wire 10 x 18 180 Coils 36 Outside coils lengthwise (Outside Edge) 40 Center coils, 5 x 8, 14 Gauge Balance of Unit, 13 x 8, 104 Coils, 14½ Gauge
Packing	—200 Test Carton
Marks	—Sealy Fastasleep Printed Label Sealy Fastasleep Supplementary Label
	Wholesale Price..... \$11.00
	Resale Price..... \$19.95
	Royalty..... .25

Sealy Truease

Cover	—Damask, as specified, or 6 Oz. stripe
Burlap	—7 or 8 Oz.
Border	—Prebuilt, with embroidered eyelets, as specified, or eyelet
Filling	—38 lbs. Felt (Millrun Linters)
Finish	—Tape Edge
Buttons	—78 4 6 Diamond Tuft
Tailoring	—Inside Roll Handles
Unit, 180-190	—Spring Wire 10 x 19
Coils, Based on	54 Outside Edge Coils, All Around,
190 Coils	14 Gauge 40 Center Coils, 5 x 8 14 Gauge Balance of Unit, 12 x 8, 96 Coils 14½ Gauge # 17 Gauge Helicals, 3/8" O.D.
Packing	—200 Test Carton

Marks—Sealy Truease Printed Label &
Supplementary Label

Wholesale Price.....	\$12.75
Resale Price.....	\$24.75
Royalty.....	.35

Sealy Natural Rest**Cover
Burlap
Border**

- Damask, as specified, or ACA
- 7 or 8 Oz.
- Prebuilt, with embroidered eyelets,
as specified; or eyelet

**Filling
Finish
Buttons
Tailoring
Unit**

- 38 lbs. Felt (Millrun Linters)
- Mercerized Tape Edge
- 78 4 x 6 Diamond Tuft
- Inside Roll Handles
- Spring Wire 12 x 20 240 Coils
60 Outside edge coils all around,
14 Gauge
60 Center Coils, 6 x 10, 14½ Gauge
Balance of Unit, 15 Gauge Coils,
Regular Centers, 12 x 10, 120 Coils
17 Gauge Helicals, 3/8" O. D.

**Packing
Marks**

- 200 Test Carton
 - Sealy Natural Rest Woven Label
Sealy Natural Rest Supplementary Label
- | | |
|----------------------|---------|
| Wholesale Price..... | \$15.50 |
| Resale Price..... | \$29.50 |
| Royalty..... | .50 |

[fol. 1240E]

Sealy Airvent**Cover
Burlap
Border**

- Damask, as specified, or ACA
- 7 or 8 Oz.
- Prebuilt, with embroidered eyelets
as specified, or eyelet

**Filling
Finish
Buttons
Tailoring
Unit**

- 38 lbs. Fancy 1st Cut Linters
- Mercerized Tape Edge
- 78 4 x 6 Diamond
- Inside Roll Handles
- Spring Wire, 12 x 20, 240 Coils

240 Coils

- 60 Outside Edge Coils All Around, # 14 Gauge
- 60 Center Coils, 6 x 10 with Close centers, 14½ Gauge
- Balance of Unit, Regular Centers, 12 x 10, 120 Coils, 15 Gauge
- # 17 Gauge Helicals, 3/8" O.D.

Packing
Marks

- 200 Test Carton
- Sealy Airvent Woven Label
- Sealy Airvent Supplementary Label

Wholesale Price.....	\$17.75
Resale Price.....	\$34.50
Royalty.....	.75

Sealy Enchanted Nights

Cover
Border
Filling

- Damask, as specified, or ACA
- Prebuilt
- Burlap Spring Cover, 7 or 8 Oz.
- 38 Lbs. Fancy 1st Cut Linters

Unit
286 Coil

- Spring Wire, 13 x 22, 286 Coils
- 66 Outside Edge Coils All Around
- # 14 Gauge Wire 66 Center Coils, 6 x 11, # 14½ Ga. Wire
- Balance of Unit, 15 Gauge Coils, 14 x 11, 154 Coils

Tailoring
Finish
Buttons
Packing
Marks

- Inside Roll Edge, Handles
- Mercerized Tape Edge
- 78 metal, 4 x 6 Diamond Tuft
- 200 Test Carton
- Sealy Enchanted Nights Woven Label
- Sealy Enchanted Nights Supplementary Label

Wholesale Price.....	\$21.00
Resale Price.....	\$39.50
Royalty.....	1.00

Sealy Tuftless

Cover
*Border
Tailoring

- Damask, as specified, or ACA
- Plain
- Outside Roll Edge, Tape Edge, Handles

Filling	—50 lbs. Strict Middling Harsh 1/8" Staple Cotton or better, ginned or garnetted
Finish	—Mercerized Tape Edge
No Tufts	
Packing	—200 Test Carton
Marks	—Sealy Tuftless Woven Label Sealy Tuftless Supplementary Label
	Wholesale Price..... \$21.00
	Resale Price..... \$42.50
	Royalty..... 1.00

[fol. 1241E]

Sealy Rest

Cover	—Damask, as specified, or ACA
Burlap	—8 Oz.
Border	—Prebuilt, with embroidered eyelets, as specified, or eyelet
Filling	—2—52 x 73 Nukraft Pads, made by the B.F. Goodrich Company 20 Lbs. Felt (Fancy 1st Cut Linters)
Finish	—Mercerized Tape Edge
Unit	—Spring Wire, 12 x 20, 240 Coils
240 Coils	—60 Outside Edge Coils All Around, # 14 Ga. 60 Center Coils, 6 x 10, 14 1/2 Ga., with close centers. Balance of Unit, 15 Ga. Coils, regular centers, 12 x 10, 120 Coils # 17 Ga. Helicals, 3/8" O.D.
Packing	—200 Test Carton
Tailoring	—Inside Roll Handles
Marks	—Sealy Rest Tuftless Woven Label Sealy Rest Tuftless Supplementary Label
	Wholesale Price..... \$23.50
	Resale Price..... \$44.50
	Royalty..... 1.00

Sealy Super Rest

Cover	—Damask, as specified, or 8 Oz.
	Herringbone ACA
Burlap	—7 or 8 Oz.

Border	—Prebuilt, with embroidered eyelets, as specified, or eyelet
Filling	—2—52 x 73 Nukraft Pads made by the B.F. Goodrich Company 20 lbs. Fancy 1st Cut Linters
Finish	—Mercerized Tape Edge
Tailoring	—Inside Roll Handles
Unit	—Spring Wire, 13 x 22, 286 Coils
286 Coil	—66 Outside Edge Coils All Around, #14 Gauge 66 Center Coils, 6 x 11, 14½ Gauge Balance of Unit, 15 Gauge, 14 x 11, 154 Coils
Packing	—200 Test Carton
Marks	—Sealy Super Rest Woven Label Sealy Super Rest Supplementary Label
	Wholesale Price..... \$28.75
	Resale Price..... \$54.50
	Royalty..... 1.50

Sealy Sleep Ensemble Base

Cover	—Damask, as specified, or ACA
Border	—5 Row Cord Edge
Base	—Helical Tied Unit nailed to wood frame and snubbed
Coils	—90 # 11 Standard Wire Single Cone
Slats	—10 1 x # 11 Steel
Border Wire	—# 0
Helicals	—72 Pr. # 16 Standard Wire Interlocked
Frame	—Outside Box Spring Frame
Cover	—7 or 8 Oz. Burlap placed over coils
Unit	—180 Coils, # 13 Standard Innerspring —Unit, sewed on top of coils
Filling	—1 Sisal Pad Allover 56" x 78" 7 lbs. Fancy 1st Cut Linters
Top Border	—# 4, attached to unit by clips
[fol. 1242E]	
Cover	—7 or 8 Oz. Burlap sewed to top of innerspring unit.
Vents	—Four
Handles	—Four Cloth
Bottom Tick	—Regular Sheeting

Sealy Sleep Ensemble Mattress

Cover	—Damask, as specified or ACA
Boxing	—2½"
Filling	—1 52 x 73 Nukraft Pad 28 Lbs. Fancy 1st Cut Linters
Tailoring	—2 Row Cord Edge
No Tufts	
Packing	—200 Test Carton
Marks	—Sealy Sleep Ensemble Woven Label Sealy Sleep Ensemble Supplementary Label
	Wholesale Price..... \$35.75
	Resale Price..... \$69.50
	Royalty..... 2.00

Sealy Sunspun

Cover	—Sunshine Satin or Equal Preferred Cover—Sunshine Satin (Arthur Kahn) 75¢ to 85¢ dependent on color
Border	—4 Row Flexo Cord
Burlap	—7 or 8 Oz.
Filling	—2 Nukraft Pads 52 x 73 20 lbs. # 1 Staple Cotton Felt
Tailoring	—4 Metal Handles Inside Roll Edge —Cord Edge
Finish	
No Tufts	—240 Coil Durolife Innerspring Unit Spring Wire 12 x 20 240 Coil 60 Outside Edge Coils all around. # 14 Gauge 60 Center Coils, 6 x 10 with close centers, 14½ Gauge. # 17 Ga. Helicals, 3/8" O. D.
Unit	—200 Test Carton
Packing	—Sealy Sunspun Woven Label Sealy Sunspun Supplementary Label
Marks	Wholesale Price..... \$35.75 Resale Price..... \$69.50 Royalty..... 2.50

Construction Details—Made with 240 Coil unit. Burlap over unit. Nukraft on both sides of unit. Hair pad on top of Nukraft on each side, 10 lbs. Staple cotton felt on each side. Made with inside roll, cord edge. Made tuftless.

Sealy Airlite Ensemble Base

Cover	—Linen Tick 40" Wide
Border	—5 Row Flexo Cord
Filling	—1 Nukraft Pad 52 x 73 5 lbs. Staple Cotton Felt
Coils	—90 Coil, # 11 Standard or Premier Wire coils, 10 x 9
Slats	—Ten 1 x # 11 Steel
Border Wire	—# 0
Helicals	—72 pr., # 16 Standard or Premier Wire Interlocked
Frame	—Outside Box Spring Frame
Cover	—7 or 8 Oz. Burlap
Unit	—180 Coils, # 13 Standard or Premier Innerspring Unit sewed on top of coils
Filling	—1 Nukraft Pad 52 x 73 5 lbs. # 1 Staple Cotton Felt

[fol. 1243E]

Top Border	—# 4 attached to Unit by clips
Cover	—7 or 8 Oz. Burlap sewed to top of innerspring unit.
Vents	—Eight
Handles	—Four Cloth
Bottom Tick	—Regular Sheeting

Sealy Airlite Ensemble Mattress

Cover	—Linen Tick 40" Wide
Boxing	—2½"
Filling	—15 lbs. Staple Cotton Felt 1 Nukraft Pad 52 x 73
Tailoring	—2 Row Flexo Cord Edge
Buttons	—4 x 6 Diamond (78)
Packing	—200 Test Carton

Marks

- Sealy Airlite Ensemble Woven Label
- Sealy Airlite Ensemble Supplementary Label

Wholesale Price.....	\$47.50
Resale Price.....	\$95.00
Royalty.....	3.00

Construction Details

Mattress

- Made with 1 Nukraft pad in the center, 7½ lbs. of staple cotton felt on each side. Tuftless

Base

- Made the same as our regular Sleep Ensemble base. Helical tied 90 coil spring on wood frame. 180 coil unit on top. Burlap in between. Burlap over top unit. 1 Nukraft pad, 5 pounds of staple cotton felt.

Sealy Super Sleep Ensemble Base.

Cover

- Sunshine Satin or equal

Border

- 4 Row Flexo Cord

Filling

- 1 Nukraft Pad 52" x 73"
- 4 lbs. Staple Cotton Felt
- 7 or 8 Oz. Burlap placed over box spring coils.

Construction

- Ninety # 10 Gauge Wire Standard or Premier—10 Rows long, 9 Coils each, hand tied with twine 8 ways

Border Wire

- # 4 Gauge Steel attached by metal clips

Unit

264 Coils

- 12 Rows Wide, 22 Rows Deep,
- 264 Coils
- 200 Center Coils—15 Gauge Standard or Premier Wire
- 64 Outside Edge Coils—14 Ga. Standard or Premier Wire
- 264 Coil Innerspring Unit attached to top of box spring base with metal clips
- Burlap 7 or 8 Oz. placed on top of innerspring unit.

- Top Border Wire**—#4 attached to top of unit
with 34 clips
- Handles** —Taped cloth
- Bottom Ticking** —550 Sheeting
- Frame** —Wood reinforced and or sides with
8 cross slats. Finished size
52½ x 74 4½" radius all corners

[fol. 1244E] **Sealy Super Sleep Ensemble Mattress**

- Cover** —Sunshine Satin or Equal
- Boxing** —3"
- Trim** —Bead Edge with 1 Row Flexo Cord
Two Colored Braid Cord
- Filling** —15 Lbs. #1 Staple Cotton Felt
1 Nukraft Pad
2 All Horse Mane Hair Pads
2 Lambs Wool Bats 4 lbs.
- No Tufts**
- Packing** —200 Test Carton
- Marks** —Sealy Super Sleep Ens. Woven Label
Sealy Super Sleep Ens. Supplementary
Label
- Wholesale Price..... \$ 75.00
- Resale Price..... \$150.00
- Royalty..... \$ 5.00

Construction Details Mattress

- Mattress** —Nukraft pad in center, hair pad on each
side of Nukraft, sewed to the Nukraft by
means of twine (similar to tufting).
7½ lbs. of staple cotton felt on each side
of hair pads. Lambs wool pads on top
of staple cotton felt, each side. (Lambs
wool pads are not fastened to the felt in
any way.)
- Base** —Burlap on top of box spring next to
innerspring unit. #4 border wire around
top unit, burlap on top of second unit.
Cushioned with a Nukraft pad, 4½ lbs.
staple cotton felt.

Sealy Enchanted Nights Style "B"

Cover	—Choice of 6½ oz. 56" Woven Goods, Patterns Covington, Waveland, or Kingsbury, available from the Blumenthal Print Works @ 26¢ a yd.
Burlap Border	—8 Oz. —4 Row Stitched, prebuilt with Felt and Muslin inside or vertical stitched border
Filling	—2 52 x 73 Nukraft Pads, made by the B. F. Goodrich Company 20 lbs. Felt (Fancy 1st cut linters)
Finish	—Mercerized Tape Edge, mattress completed on Tape Edge Machine
Unit	—240 Coil Durolife Innerspring Unit
Tailoring	—Inside Roll, Cloth Handles
Marks	—Sealy Enchanted Nights Woven Label Sealy Enchanted Nights Style B Supplementary Label
	Wholesale Price..... \$21.00
	Resale Price..... \$39.50
	Royalty..... \$ 1.00

Sealy Hotel Special Model "A"

Cover	—8 Oz. ACA Ticking
Burlap	—7 or 8 Oz.
Filling	—2 Nukraft Pads 20 lbs. 1st cut linter felt Filled in filling box
Finish	—Hand Roll Edge
Tailoring	—Small Cord Binding Jiffy Handles and Ventilators
Unit	—240 Coil Durolife Unit Spring Wire, 12 x 20, 240 Coils 60 Outside Edge Coils All Around, # 14 Ga. 60 Center Coils, 6 x 10, 14½ Gauge, with close centers Balance of Unit, 15 Gauge Coils, Regular centers, 12 x 10, 120 Coils # 17 Gauge Helicals, 3/8" O.D.

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[fol. 1245E]

Tufts
Packing
Marks

- Button Tufted
- Carton
- Sealy Hotel Special Model "A" Printed Label

Wholesale Price.....	\$19.75
Resale Price.....	\$00.00
Royalty.....	.50

Sealy Hotel Special Model "B"

Cover
Burlap
Filling

Finish
Tailoring

- 6 Oz. ACA Ticking
- 7 or 8 Oz.
- 38 lbs. 1st Cut Linter Felt
Filled in Filling Box
- Machine Roll Edge.
- Cloth Binding
Cloth Handles and Ventilators
- 240 Coil Durolife Unit
Spring Wire, 12 x 20, 240 Coils
60 Outside edge coils all around # 14 Ga.
60 center coils, 6 x 10, 14½ Ga., with
close centers
Balance of Unit, 15 Gauge Coils, Regular
centers, 12 x 10, 120 Coils
17 Gauge Helicals, 3/8" O.D.

Unit

Tufts
Packing
Marks

- Button Tufted
- Carton
- Sealy Hotel Special Model "B" Printed Label

Wholesale Price.....	\$13.75
Resale Price.....	\$00.00
Royalty.....	.35

Little Darling Crib Mattress

Cover
Boxing

Filling

- 3 yards Sateen
- Vertical Stitch Boxing including 1#
compressed felt
- Spring Unit 26" x 50" x 4" high
100 Ft. #2 Screen Wire
6# 1st Cut Linter Felt
Filled in Filling Box

Tailoring
Tufts
Packing
Marks

—Ventilators—Cloth Binding	
—Button Tufted	
—Wrapped in Paper	
—Sealy Little Darling Printed Label	
Wholesale Price.....	\$ 3.75
Resale Price.....	\$00.00
Royalty.....	.10

Sealy Sleep Charm Posture Pillow

Cover
Border
Filling
Tufting
Finish
Handles
Unit

—3 yd. goods or equivalent	
—4 row stitched border	
—36 lbs. felt including border	
—Tape	
—Tape Edge, inner roll	
—Bound cloth handles	
—Durolife Innerspring Unit (180 Coil Minimum)	
Wholesale Price.....	\$11.00
Resale Price.....	19.95
Royalty.....	.25

Sealy Truease Posture Pillow

—To have same general specifications as the Sealy Truease.
Cover—Truease Ticking (Golding Bros.)

Wholesale Price.....	\$12.75
Resale Price.....	24.75
Royalty.....	.35

[fol. 1246E] Sealy Natural Rest Posture Pillow

—To have same general specifications as the Natural Rest.
Cover—Natural Rest Ticking (Golding Bros.)

Wholesale Price.....	\$15.50
Resale Price.....	29.50
Royalty.....	.50

Sealy Air Vent Posture Pillow

—To have the same general specifications as the Sealy Air Vent Cover—Duchess of Windsor Ticking (Blumentahl Print Works)

Wholesale Price.....	\$17.75
Resale Price.....	34.50
Royalty.....	.75

Note—Filling optional as to use of Sisal Pads, Correen Fiber, Felt, etc., provided desired quality is maintained.

[fol. 1247E]

4/28/37

Basic Specifications Sealy Couches

* 1 Carlton (Rear Opener)

Cover	—20¢ in 36" width	
Coils	—40 or more	
Filling	—30 Lbs. Felt or equivalent	
Base Decking	—Nukraft	
Cushions	—Kapok or better	
Trim	—Tape or Cord	
	Wholesale.....	\$21.00
	Resale.....	39.50

* 1A Marlboro (Front Opener)

Cover	—20¢ in 36" width	
Coils	—40 or more	
Filling	—30 Lbs. Felt or equivalent	
Base Decking	—Nukraft	
Cushions	—Kapok or better	
Trim	—Tape or Cord	
	Wholesale.....	\$23.00
	Resale.....	44.50

* 1B Mayfair (Front Opener)

Cover	—20¢ in 36" width	
Coils	—40 or more	
Filling	—30 Lbs. Felt or equivalent	
Cushions	—Kapok or better	
Trim	—Tape or Cord	
No Nukraft		

Round Corners

Wholesale.....	\$21.00
Resale.....	39.50

2 Cavalier (Rear Opener)

Cover	—20¢ in 36" width
Coils	—40 or more
Filling	—30 Lbs. Felt or equivalent
Base Decking	—Nukraft
Cushions	—Kapok or better
Trim	—Tape or Cord
Pulomatic Metal Back & Arms	

Wholesale.....	\$25.50
Resale.....	49.50

3 Windsor (Bed High)

Cover	—20¢ in 36" width reverse
Coils	—40 or more
Filling	—30 Lbs. Felt or equivalent
Cushions	—Kapok or Innerspring
Trim	—Tape or Cord
Nukraft on Both Mattresses (Top Only)	
Covered Back	

Wholesale.....	\$31.50
Resale.....	59.50

4 Cogswell, Chippendale Queen Anne or Streamline
(Front Opener)

Cover	—40¢ in 54" width
Coils	—40 or better
Filling	—30 Lbs. Felt or equivalent
Cushions	—Kapok or Innerspring
Trim	—Tape or Cord
Base Decking	—Nukraft

Wholesale.....	\$33.50
Resale.....	64.50

[fol. 1248E]

(2)

**# 4A Cogswell Chippendale Queen Anne, or Streamline
(Front Opener)**

Cover	—80¢ in 54" width	
Coils	—40 or better	
Filling	—30 Lbs. Felt or equivalent	
Cushions	—Kapok or Innerspring	
Trim	—Tape or Cord	
Base Decking	—Nukraft	
	Wholesale.....	\$36.50
	Resale.....	69.50

**# 5 Cogswell Chippendale, Queen Anne, or Streamline
(Bed High)**

Cover	—40¢ in 54" width, base cover reverse 50¢	
Coils	—40 or better	
Filling	—30 Lbs. Felt or equivalent	
Cushions	—Kapok or Innerspring	
Trim	—Tape or Cord	
Nukraft on Both Mattresses (Top Only)		
	Wholesale.....	\$42.50
	Resale.....	79.50

*** 6 Cogswell Chippendale Queen Anne, or Streamline
(Bed High)**

Cover	—80¢ to 85¢ cover	
Coils	—40 or better	
Filling	—30 Lbs. Felt or equivalent	
Cushions	—Kapak or Innerspring	
Trim	—Tape or Cord	
Nukraft on Both Mattresses (Both Sides)		
	Wholesale.....	\$47.50
	Resale.....	89.50

Promotional Numbers

Without Nukraft	Minimum Résale.....	\$29.50
With Nukraft	Minimum Resale.....	34.50
Bed High	Without Nukraft.....	39.50

Note: Each Couch in the Resale Set-up is to have a Nukraft label on each piece having Nukraft in the upholstering.

Each Couch is to carry a class label showing the name of the couch and, if desired, the resale price.

Specifications for Sealy Innerspring Units

1—Material entering into the manufacture of all coil and helical springs as used for the assembled innerspring units shall be hard-process, cold-drawn, open hearth steel spring wire of the following chemical analysis:

Carbon.....	.55/ .70
Manganese.....	.90/1.20
Phosphorus.....	.05 max.
Sulphur.....	.06 max.
Silicon.....	.10/ .25

2—The average ultimate tensile strength of such wire shall be as follows:

#14 and 14½ W. & M. Ga.—	260,000 lbs. per sq. in.
#15 " " " " " "	265,000 " " " "

with a permissible variation of 25,000 lbs. per sq. in. in either direction, and an elastic limit of 80% of the ultimate, as specified above. The modulus of elasticity under tension shall fall within the range of from 29 to 30,000,000, and fatigue tests on assembled units must withstand a minimum of 100,000 compressions on the #15 ga. springs to one-half of their free height. (Best results in this respect are obtained by tempering springs, after forming, within a range of from 520 to 550 degrees Fahrenheit for a period of about 15 minutes.

3—The steel structure shall be of the shallow hardening or fine grain type, to impart optimum hardening and fatigue properties to the metal, free from any surface defects such as decarburization, cracks or fissures, and devoid of any internal laminations, banded inclusions or segregations. The finish shall be "bright", free from lime, with excess drawing compound removed by wiping.

4—Load springs shall be wound with not less than 5 turns, to a free height of 4¾" except border springs, which shall be 5½" high. The size of their top and bottom turns shall be such as to fit neatly into the finished overall dimensions of the unit as called for on the drawing, with the intermediate diameters to be selected to suit the following spring compression scales:

	#14 Ga. Compression	#14½ Ga. Compression	#15 Ga. Compression
1 lb. load.....	5/8"	3/4	7/8"
2 lb. load.....	1-1/4"	1-1/2"	1-5/8"
3 lb. load.....	1-7/8"	2-1/4"	2-5/16"
4 lb. load.....	2-3/8"	2-5/8"	2-11/16"
5 lb. load.....	2-3/4"	3"	3-1/16"
6 lb. load.....	3"	3-3/8"	3-7/16"
7 lb. load.....	3-1/4"	3-11/16"	3-13/16"
8 lb. load.....	3-7/16"	3-7/8"	4"
9 lb. load.....	3-5/8"	4-1/16"	4-3/16"
10 lb. load.....	3-13/16"	4-1/4"	—
11 lb. load.....	4"	—	—
12 lb. load.....	4-3/16"	—	—
13 lb. load.....	4-3/8"	—	—

[fol. 1250E] Tie Springs or helicals shall be as shown and called for on the drawing wherever round top load springs are used, assembled in such a way as to span the width of the unit (not its length). Where off-set top turns are used on the load springs, the size of the helical tie springs may be varied to best suit the characteristics of such construction provided, however, that they be likewise assembled across the width of the unit. Eccentric or "edge" coil springs must comply with the load characteristics of the #14 Ga. coils as above listed.

The grouping of spring rows may be varied from that shown on the drawing provided the total number of springs is not changed thereby. Thus for the 20 rows of 12 coils each on the 240 coil unit, 16 rows of 15 coils may be substituted.

5—Tolerances: The permissible variation in wire diameter shall be confined to ± 0.001 from the specified gauge. Compression tests on load springs may vary $\pm 1/4$ " from the height stated in the tabulation of the foregoing paragraph, and total height of springs may vary $\pm 3/32$ " from that specified. The total number of turns in each spring may vary $\pm 1/2$ turn, and the total weight specified on the drawing for each of the three types of innerspring units, shall be adhered to as closely as possible.

6—For the purpose of comparison with government specifications, the following method for determination of the average "resiliency" of any innerspring unit is suggested: As may be noted from the tabulation in Paragraph 4, the #14 Ga. springs shall have a capacity of 4 2/3" lbs. at 2 5/8" compression, and the 14 1/2 Ga. 3 lbs., and the 15 Ga.

2.9 lbs. at $2\frac{1}{4}$ " compression from their free height, equivalent to a $2\frac{1}{2}$ " uniform depth of the innerspring unit, when so loaded.

Taking the 240 coil unit as an example, we have 4 sections composed of 3 different types of load springs, each section constituting $\frac{1}{4}$ of the total area of the unit covering 52×73 , or 3796 sq. inches, equivalent to 26.36 sq. ft. Each section area equals, therefore, 949 sq. in., equivalent to 6.59 sq. ft., and is composed of 60 individual springs, or 9.1 springs per sq. ft. of area. When compressed to a uniform height of $2\frac{1}{2}$ ", the load carried by the border section, as is $4\frac{1}{2}$ lbs. \times 9.1 springs, or 42.4 lbs. per sq. ft., which multiplied by 6.59 sq. ft. of the area, results in 279.4 lbs. load for this part of the innerspring unit. The center section springs will carry 3 lbs. \times 9.1, or 27.3 lbs. per sq. ft., or 27.3×6.59 or 179.9 lbs. load for that part of the innerspring unit. The two intermediate panels will each carry 2.9 lbs. \times 9.1, or 26.39 lbs. per sq. ft., or 173.9 lbs. total for each panel, so that the total load sustained by the innerspring unit, when compressed to a uniform depth of $2\frac{1}{2}$ ", is

	279.4 lbs.
plus	179.9
plus	173.9
plus	173.9
or	807.1 lbs.

for the entire area of 26.36 sq. ft.; dividing one into the other, an average sustained load of 30.6 lbs. per sq. ft. under compression to $2\frac{1}{2}$ " depth, is arrived at.

7—The Sealy Mattress Company's drawings #3616, 3617 and 3618, illustrating the 286, 190 and 240 coil units respectively, and dated January 5-6, 1937, shall form part of these specifications.

+ Plus
- Minus

[fol. 1251E]

6/23/37

Amended Sealy Box Spring Specifications

Sealy Sleep Charm

Cover	—Damask, as specified, or 6 Oz. Stripe
Border	—Prebuilt, with embroidered eyelets, as specified, or approved alternate.
Bottom Tick	—550 sheeting
Burlap	—7 or 8 Oz.
Filling	—10 Lbs. of Felt (Millrun Linters)
Frame	—Skeleton wood, no slats
Unit	—90 Coil, helical wire tied, mounted on twisted slats nailed to wood frame
Tailoring	—Tape edge to match mattress
Packing	—200 Test Carton
Marks	—Sealy Sleep Charm Printed Label Sealy Sleep Charm Supplementary Label
	Selling Price..... \$11.50
	Resale Price..... 22.75
	Royalty..... .25
	P.M..... .25

Sealy Truease

Cover	—Damask, as specified, or ACA
Border	—Prebuilt, with embroidered eyelets, as specified, or approved alternate.
Bottom Tick	—550 Sheeting
Burlap	—7 or 8 Oz.
Filling	—10 Lbs. Felt (Millrun Linters)
Frame	—Skeleton wood, no slats
Unit	—90 Coil, helical wire tied, mounted on twisted slats nailed to wood frame
Tailoring	—Tape edge to match mattress.
Packing	—200 Test Carton

Marks

—Sealy Truease Printed Label	
Sealy Truease Supplementary Label	
Selling Price.....	\$13.75
Resale Price.....	26.75
Royalty.....	.35
P.M.....	.50

[fol. 1252E]

Sealy Natural Rest

Cover	—Damask, as specified, or ACA
Border	—Prebuilt, with embroidered eyelets, as specified, or approved alternate.
Bottom Tick	—550 Sheeting
Burlap	—7 or 8 Oz.
Filling	—10 Lbs. Felt (Millrun Linters)
Frame	—Skeleton wood, no slats
Unit	—90 Coil, helical wire tied, mounted on twisted slats nailed to wood frame
Tailoring	—Mercerized Tape Edge
Packing	—200 Test Carton
Marks	—Sealy Natural Rest Woven Label

Sealy Natural Rest Supplementary Label

Selling Price.....	\$15.50
Resale Price.....	29.50
Royalty.....	.50
P.M.....	.75

Sealy Airvent

Cover	—Damask, as specified, or ACA
Border	—Prebuilt, with embroidered eyelets, as specified, or approved alternate
Bottom Tick	—550 Sheeting
Burlap	—7 or 8 Oz.
Filling	—10 Lbs. Felt (Fancy 1st Cut Linters)
Frame	—Wood, 9 Slats, 9 Coils per Slat, Approximate weight of coils 19½ lbs., #10 Standard or Premier Wire Coils
Tailoring	—Mercerized Tape Edge
Twine	—Italian Hemp, 8 Way, Hand Tied

Border Wire	—# 4 Acme, attached to edge coils with Clips.	
Packing Marks	—200 Test Carton	
	—Sealy Airvent Woven Label	
	Sealy Airvent Supplementary Label	
	Selling Price.....	\$17.75
	Resale Price.....	34.50
	Royalty.....	.75
	P.M.....	1.00

[fol. 1253E]

Sealy Enchanted Nights

Cover	—Damask, as specified, or ACA	
Border	—Prebuilt, with embroidered eyelets, as specified, or approved alternate.	
Bottom Tick	—550 Sheeting	
Burlap	—7 or 8 Oz.	
Filling	—10 Lbs. Felt (Fancy 1st Cut Linters)	
Frame	—Wood, 9 Slats, 10 Coils per Slat, Approximate weight of coils 21-6/10 lbs., # 10 Standard or Premier Wire Coils	
Tailoring	—Mercerized Tape Edge	
Twine	—Italian Hemp, 8 Way, Hand Tied	
Border Wire	—# 4 Acme, attached to edge coils with Clips.	
Packing Marks	—200 Test Carton	
	—Sealy Enchanted Nights Woven Label	
	Sealy Enchanted Nights Supplementary Label	
	Selling Price.....	\$21.00
	Resale Price.....	39.50
	Royalty.....	1.00
	P.M.....	1.00

Sealy Tuftless

Cover	—8 Oz. Stripe, or approved alternate.	
Border	—To Match	
Bottom Tick	—550 Sheeting	
Burlap	—7 or 8 Oz.	
Filling	—10 Lbs. Felt (Fancy 1st Cut Linters)	

Frame	—Wood, 9 Slats, 10 Coils per Slat, Approximate weight of coils 21-6/10 lbs., # 10 Standard or Premier Wire Coils
Tailoring	—Mercerized Tape Edge
Twine	—Italian Hemp, 8 Way, Hand Tied
Border Wire	—# 4 Acme, attached to edge coils with Clips.
Packing	—200 Test Carton
Marks	—Sealy Tuftless Woven Label Sealy Tuftless Supplementary Label
	Selling Price..... \$21.00
	Resale Price..... 42.50
	Royalty..... 1.00
	P.M..... 1.00

[fol. 1254E]

Sealy Rest

Cover	—Damask, as specified, or ACA
Border	—Prebuilt, with embroidered eye- lets, or approved alternate
Bottom Tick	—550 Sheeting
Burlap	—7 or 8 Oz.
Filling	—5 Lbs. Fancy 1st Cut Cotton Linters 1-52 x 73 Nukraft Pad
Frame	—Wood, 9 Slats, 9 Coils per Slat, Approximate weight of coils 19½ lbs., # 10 Standard or Premier Wire Coils
Tailoring	—Mercerized Tape Edge
Twine	—Italian Hemp, 8 Way, Hand Tied
Border Wire	—# 4 Acme, attached to edge coils with Clips.
Packing	—200 Test Carton
Marks	—Sealy Rest Tuftless Woven Label Sealy Rest Tuftless Supplementary Label
	Selling Price..... \$23.50
	Resale Price..... 44.50
	Royalty..... 1.00
	P.M..... 1.50

Sealy Super Rest

Cover	—Damask, as specified, or 8 Oz. Herringbone ACA
Border	—Prebuilt, with embroidered eyelets, as specified, or approved alternate.
Bottom Tick	—550 Sheeting
Burlap	—7 or 8 Oz.
Filling	—5 Lbs. #3 Fancy 1st Cut Lint 1-52 x 73 Nukraft Pad
Frame	—Wood, 9 Slat, 10 Coils per Slat, Approximate weight of coils 21-6/10 lbs. #10 Standard or Premier Wire Coils
Tailoring	—Mercerized Tape Edge
Twine	—Italian Hemp, 8 Way, Hand Tied
Border Wire	—#4 Acme, attached to edge coils with Clips.
Packing	—200 Test Carton
Marks	—Sealy Super Rest Woven Label Sealy Super Rest Supplementary Label
	Selling Price..... \$25.75
	Resale Price..... 49.50
	Royalty..... 1.50
	P.M..... 1.75

[fol. 1255E]

Sealy Stylcrest

Cover	—As specified
Border	—4 Row Flexo Cord
Bottom Tick	—Drill
Burlap	—7 or 8 Oz.
Filling	—1 Nukraft Pad 52 x 73 2 Lbs. Lambs Wool
Frame	—Wood, 9 Slat, 9 Coils per Slat, Approximate weight of Coils 19½ lbs., #10 Standard or Premier Wire
Tailoring	—Mercerized Tape Edge
Twine	—Italian Hemp, 8 Way, Hand Tied
Border Wire	—#4 Acme, attached to coils by means of Clips.
Packing	—200 Test Carton

Marks

—Sealy Stylcrest Woven Label

Sealy Stylcrest Supplementary Label

Selling Price..... \$31.50

Resale Price..... 59.50

Royalty..... 2.00

P.M..... 2.00

Sealy Sunspun**Cover**

—As specified

Border

—4 Row Flexo Cord

Bottom Tick

—Drill

Burlap

—7 or 8 Oz.

Filling

—1 Nukraft Pad 52 x 73

7 Lbs. Staple cotton felt

Frame

—Wood, 9 Slats, 9 Coils per Slat,

Approximate weight of coils 19½ lbs.,

10 Standard or Premier Wire Coils

Finish

—Cord Edge

Twine

—Italian Hemp

Border Wire—# 4 Acme, Attached to coils by means of
Clips.**Packing**

—200 Test Carton

Marks

—Sealy Sunspun Woven Label

Sealy Sunspun Supplementary Label

Selling Price..... \$32.50

Resale Price..... 59.50

Royalty..... 2.00

P.M..... 2.00

[fol. 1256E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1020

WESTERN UNION

Joseph L. Egan, President

MEMPHIS, TENN. DEC. 2, 1948
I. A. WIENER
SEALY MATTRESS CO.
38 EVERETT ST.
ALLSTON, MASS.

WITHHOLD DELIVERIES OR SOLICITATION OF SEALY MERCHANDISE INTO FORMER FALL RIVER TERRITORY UNTIL I CALL YOU ON DECEMBER 6 OR 7. TERRITORY MAY NOT BE FREE OF LEGAL ENTANGLEMENTS UNTIL DECEMBER 31 BUT ORDERS CAN NOW BE TAKEN FOR DELIVERY AFTER THAT DATE

SEALY, INCORPORATED

J. R. LAWRENCE

DAY LETTER—PAID

[fol. 1257E] SEALY MATTRESS COMPANY

"Sleeping on a Sealy is like Sleeping on a Cloud"

ALLSTON, MASSACHUSETTS
Telephone Stadium 2-2280 - 2-2281
Thirty-Eight to Forty-Two Everett Street

November 29, 1948.

Sealy, Inc.,
1047 Florida St.,
Memphis, Tennessee.

Attention: Mr. J. R. Lawrence

Dear Mr. Lawrence:

We are in receipt of yours of November 24th, with reference to releasing territory, and adding new territory.

This letter will act as a means of releasing the State of Vermont, with the exception of the city of Brattleboro as agreed with Mr. Yulman of Schenectady.

We are adding the following counties to our territory, all located in Massachusetts: Bristol, Plymouth, Barnstable, Dukes, and Nantucket.

It is our understanding that this territory change becomes effective December 1, 1948.

Very truly yours, Sealy of Boston, I. A. Wiener.

[fol. 1258E]

November 24, 1948.

Air Mail

Sealy Mattress Company
38 Everett Street
Allston, Massachusetts
Attn: Mr. I. A. Wiener

Dear Mr. Wiener:

Mr. Bergmann has authorized the addition of the following counties in the state of Massachusetts to your licensee agreement with Sealy, Inc.: Bristol, Plymouth, Barnstable, Dukes, and Nantucket. In connection with this, you are to write us a letter releasing the state of Vermont from your present license agreement and surrendering this territory back to Sealy, Inc.

As soon as we have your letter releasing the territory of Vermont, Sealy, Inc., will give you a letter officially incorporating the above named counties into your present license agreement.

Please give this your immediate attention as we would like to complete these formalities.

With best wishes,

Yours very truly, Sealy, Incorporated.

JRLawrence/b

co—Mr. E. H. Bergmann.

[fol. 1269E]

WESTERN UNION
Joseph L. Egan, President

MEMPHIS, TENN. DEC. 8, 1943
J. R. LAWRENCE
C/O MRS. HORTENSE MACDONALD
ROBT. W. ORR & ASSOCIATES, INC.
4 WEST 55TH ST.
NEW YORK, N. Y.

ALLSTON SAYS WIRE WHETHER CAN SOLICIT BUSINESS IN FALL
RIVER TERRITORY FOR DELIVERY JANUARY FIRST

SEALY, INC.
L. BALLARD

STRAIGHT—PAID

[fol. 1269E]

WESTERN UNION
Joseph L. Egan, President

MGNO11PD=TDB ALLSTON MASS 8 132P=
SEALY INC=ATTN J R LAWRENCE=

1943 DEC 8 PM 1 27

PLEASE ADVISE RESULT REGARDING FALL RIVER TERRITORY
CAN WE OR CAN WE NOT SOLICIT BUSINESS FOR JANUARY
FIRST DELIVERY WIRE REPLY=

SEALY MATTRESS=

[fol. 1261E]

December 15, 1948.

Sealy Mattress Company,
38 Everett Street,
Allston, Mass.

Attention: Mr. I. A. Wiener

Dear Mr. Wiener:

This is your authority to solicit and deliver Sealy merchandise at once to the accounts in the former Fall River territory that has been assigned to your plant. We were negotiating with the Osiasons for an extension on their deadline of November 30th to December 31st in return for their acquiescence to the cancellation of the contract. However, negotiations have broken down and we are taking immediate legal proceedings to fully protect the rights of Sealy, Incorporated and the Eagle Mattress Company.

The way is clear for you to solicit and deliver Sealy merchandise immediately and you will not have to wait until after the first of the year as we originally informed you.

Yours very truly, Sealy, Incorporated, J. R.
Lawrence.

JRL/if

[fol. 1262E]

R. C. 12/27/44.

This Agreement, Made and entered into this, the first day of May 1946, by and between Sealy, Inc., a Delaware Corporation, hereinafter called "Sealy" party of the first part, and Eagle Mattress Company, Inc., a corporation of Massachusetts, hereinafter called "Licensee", party of the second part;

Witnesseth:

Whereas, Sealy is the owner of certain patents, trademarks, tradenames, copyrights, slogans, secret methods, processes, and specifications, for the manufacture and sale of mattresses, studio couches, sofa beds, bed springs, bedding, and similar products, and from time to time does originate and develop patents, secret methods, processes, and specifications (which may or may not be copyrighted) for the manufacture of the above enumerated products, and does originate trademarks, tradenames, copyrights, slogans, and methods for the sale of such products, and has extensively advertised the name "Sealy" and its trademarks, tradenames, and slogans, and,

Whereas, Licensee desires to manufacture and sell to retail stores Sealy products within an exclusive territory under the terms and conditions hereinafter set forth, and to use Sealy's patents, trademarks, tradenames, copyrights, slogans, secret manufacturing methods, processes and specifications; to use Sealy's secret methods for merchandising and selling, and to obtain the benefit of Sealy's advertising of its name, its trademarks, tradenames, copyrights, and slogans;

Now, therefore, for and in consideration of the covenants and agreements from one party to the other party, as hereinafter set forth, and of their prompt and punctual performance by each party, and of other valuable consideration, the receipt of which is hereby acknowledged, It Is Agreed:

I

Definitions

I.1. The term "Sealy products" is defined as mattresses including ensembles, studio couches, divans, studio lounge beds, sofa beds, chairs matching the last four (4) men-

tioned items, bed springs, box springs, foundation units, pillows, cushions, comforts, similar and related articles, and such other items which Sealy, may, from time to time, add to its products, whether or not such articles are patented or the tradenames thereof registered. This definition of "Sealy products" shall include such manufactured articles known as "Sealy" or "Crestline" products which have affixed thereto Sealy or Crestline trademarks, tradenames, or slogans defined in Paragraph I:2 of this Article. Except as specifically hereinafter provided in this contract, the term "Sealy products" shall include both the Sealy and Crestline manufactured products.

I:2. Sealy trademarks, tradenames, or slogans, whether or not registered, are defined as "Crestline", "Sealy Rest", "Sealy Tuftless", "Cotton Boll", "Truease", "Texlan", "Luxel", "Sunspun", "Durplife", "Posture Pillow", "Fast-Asleep", "Sleep Charm", "Natural Rest", "Air Vent", "Sleep Joy", "Sealy Kraft", "Airlite", "Enchanted Nights", "Airwoven", "Vital Third", "A Giant Pillow for the Body", "Like Sleeping on a Cloud", "Prize Winner", and such other trademarks, tradenames, and slogans as Sealy may hereafter, from time to time, use and disclose to Licensee.

I:3. "Territory" is defined as the area in which the Licensee shall have the exclusive right to manufacture and sell to retail stores Sealy products, and for such purpose only to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes and specifications.

[fol. 1263E] I:4. "Licensee" is defined as the person, firm, or corporation to whom Sealy allocates a specified area in which such person, firm, or corporation only shall manufacture and sell Sealy products to retail stores, and for such purpose shall have the exclusive right to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, and use Sealy labels.

I:5. "Specifications" are defined as the type, quality and quantity of materials which Sealy determines, from time to time, are to be used in the manufacture of "Sealy products".

I:6. "Methods and Processes" are defined as Sealy's methods and processes of manufacture and sale, whether

or not patented, and which are furnished by Sealy to its Licensees for the manufacture and sale of Sealy products.

II

Licensee's Territory and Term of Contract

II:1. That party of the second part is named the sole and exclusive Licensee under this agreement, and shall have the sole right to manufacture and sell Sealy products and use Sealy labels affixed to such products in the territory defined in Paragraph II:2 for the term of this license or any extension thereof.

II:2. The territory in which Licensee shall have the sole right to manufacture and sell Sealy products and use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications is as follows:

The entire State of Maine.

The city of Brattleboro only in State of Vermont

The following counties in State of Massachusetts:

Norfolk, Essex, Suffolk, Middlesex, Bristol, Plymouth, Barnstable, Dukes, Nantucket.

The entire State of New Hampshire.

II:3. The term of this contract shall be for three (3) years, beginning May 1, 1946 and ending April 30, 1949, unless sooner terminated by the agreement of the parties or the provisions of this agreement.

III

Sealy's Covenants and Agreements

Sealy covenants and agrees while this contract is in full force and effect:

III:1. To permit Licensee the use of Sealy patents, copyrights, trademarks, tradenames, slogans, exclusive rights, and licenses in the manner and form prescribed by Sealy in the manufacture and sale of Sealy products.

III:2. To furnish Licensee true and correct copies of

specifications presently used in the manufacture of Sealy products. Such specifications may be changed at any time by Sealy, and, when changed, written notice thereof together with the new specifications shall be furnished by Sealy to Licensee, and after thirty (30) days from the date of such notice shall become the specifications to which all Sealy products thereafter manufactured by Licensee must conform.

III:3. To furnish Licensee full information concerning its methods and processes of manufacture and sale. Such methods and processes may be changed, from time to time, by Sealy, and, when changed, written notice thereof together with the new methods and processes shall be furnished by Sealy to the Licensee, and after thirty (30) days from the date of such notice shall become the methods and processes to which all Sealy products thereafter manufactured by Licensee must conform. If any of such processes or methods, furnished by Sealy to Licensee, should in any wise violate any of the laws, rules, or regulations of the [fol. 1264E] United States Government or any of its Agencies, or the laws of the State in which Licensee manufactures or sells, then such processes or methods shall not be binding upon or enforceable against Licensee.

III:4. To defend at Sealy's expense any and all suits against Licensee for patent or trademark infringement because of Licensee's use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the manufacture of Sealy products, provided:

(a) That the said Sealy products are manufactured in accordance with Sealy specifications and processes of manufacture herein defined; and,

(b) As conditions precedent for such protection Licensee shall give notice:

(1) By registered mail to Sealy at its office in Chicago, Illinois, promptly, of any claim of infringement against Licensee because of Licensee's use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the manufacture of Sealy products, and in such notice shall advise Sealy all facts concerning such alleged claim for infringement; and,

(2) In the event any suit should be filed against Li-

licensee based upon such alleged infringement, to forward to Sealy at its office in Chicago, Illinois, the complaint, petition, or copy thereof in said cause within two (2) days after service of said complaint or petition upon Licensee.

III:5. Sealy shall in no event incur any liability to Licensee because of any claim, demand, or suit for infringement until such liability shall have been finally determined in a court of last resort after actual trial, and unless Sealy shall have been given the notice, as herein provided, of the filing of any claim, demand, or suit, against Licensee for such alleged infringement.

III:6. Sealy will not manufacture nor sell, nor will it without the consent of Licensee contract with or permit any other person, partnership, association, or corporation, to manufacture or sell Sealy products within the territory allocated to Licensee so long as this contract is in force; and Sealy will prevent, insofar as it is legally permitted, the manufacture, sale, or shipment of Sealy products in said territory by any other person, partnership, association, or Corporation, except that Sealy, directly or through a subsidiary, or by contract with another manufacturer shall have the right to manufacture and sell bed springs, sofa and divan springs and springs of all types within the territory covered by this contract to Licensee, and if, for any reason, the Licensee in the territory does not desire to purchase such springs, or any part thereof, then to sell such springs to other persons, firms, or corporations in the territory covered by this contract but not as Sealy products nor bearing Sealy labels.

III:7. Sealy will pay to Licensee as liquidated damages Ten (\$10.00) and 00/100 Dollars for each Sealy product sold or shipped by Sealy into Licensee's exclusive territory; and Sealy will pay Ten (\$10.00) and 00/100 Dollars, less the cost of collection for each such article sold or shipped in Licensee's exclusive territory by any person, partnership, association, or corporation having in force a contract with Sealy identical with or similar to this contract; provided, that Sealy has therefore collected said Ten (\$10.00) and 00/100 Dollars for each such article from said person, partnership, association, or corporation manu-

facturing or selling such articles. But this provision shall not apply to the sale of Furniture Market Samples of Sealy, Incorporated.

III:8. To permit Licensee upon written request to use the term "Sealy" in its corporate or business name, but only in connection with the manufacture and sale of Sealy products and not for the manufacture and sale of any other products.

III:0. To use and expend at least fifty per cent of the amount paid it as royalties under Paragraph V:1 and V:3 of this contract and other similar contracts which Sealy has with its Licensees for national and other advertisements, merchandising, and general sales promotion of Sealy products throughout the United States, it being understood that the amount expended by Sealy (a) for salary, office and administrative costs, and (b) for payments to the Licensees for Sealy's share of local advertisement in Licensee's territory, are considered a part of such advertising, merchandising, and sales promotion expense. The type of advertising, merchandising and sales promotion, and the amount expended for each of such items [fol. 1265E] and when such expenditures shall be made, shall be determined by Sealy's Board of Directors.

IV

Licensee's Covenants and Agreements

Licensee covenants and agrees:

IV:1. Licensee covenants and agrees during the term of this agreement to manufacture at Licensee's own expense Sealy products in the designated territory strictly in accordance with Sealy specifications, patents, processes, exclusive rights, and licenses now owned or controlled, or hereafter acquired by Sealy, and not to use or utilize any of such specifications, patents, processes, exclusive rights, and licenses in the manufacture of any other product; and to comply after the expiration of thirty (30) days with any change made by Sealy in the specifications of Sealy products or in the methods or processes of their manufacture; and to sell Sealy products to retail stores in the designated territory.

IV:2. To use exclusively in the manufacture of Sealy products, and for no other purpose, all materials and/or supplies furnished for such purpose whether supplied by or procured through Sealy or purchased by the Licensee from any other source.

IV:3. To maintain adequate facilities for the manufacture of all Sealy mattresses exclusive of Crestline mattresses in the designated territory; and to maintain an adequate selling force for the sale of such Sealy products as are manufactured by the Licensee in constant and continuous effort in said designated territory.

Sealy's Board of Directors shall have the sole right to determine the adequacy of Licensee's manufacturing facilities, whether Licensee should manufacture all Sealy mattresses exclusive of Crestline mattresses, and the adequacy of Licensee's efforts to sell Sealy products manufactured by Licensee. Failure of Licensee to maintain adequate manufacturing facilities for the manufacture of Sealy mattresses (not including Crestline mattresses) or to manufacture all Sealy mattresses exclusive of Crestline mattresses if required by Sealy's Board of Directors, or to properly and vigorously push the sale of Sealy products manufactured by Licensee, shall be deemed a violation of this contract, and Sealy shall have the right to terminate same by written notice addressed to Licensee at its last known place of business.

Licensee shall not manufacture, sell or deliver within the territory allocated to Licensee any products competitive to Sealy which bear labels, trademarks, tradenames, slogans of any nationally advertised competitor of Sealy; and Licensee shall not sell or deliver Sealy products outside of Licensee's exclusive territory; and Licensee shall not sell or deliver Sealy products if Licensee knows or has reason to believe that the purchaser intends to resell or deliver the same for resale out of said Licensee's exclusive territory; and Licensee shall not sell or deliver any Sealy products to wholesalers, distributors, or mail order houses without first having obtained from Sealy permission to make such sale.

IV:4. To advertise Sealy products by means embodying Sealy trademarks, tradenames, copyrights, slogans, or designs; and, upon request, either oral or in writing, by

Sealy, to forthwith discontinue any advertising or form or advertisement in any newspaper, publication, or otherwise, which is objectionable to Sealy, not to advertise nor represent that any of Licensee's products other than Sealy products are manufactured or sold by the makers of Sealy products unless so authorized by the President of Sealy or its Board of Directors; and if so authorized to discontinue said form of advertising immediately upon request of Sealy or its President; not to advertise nor represent a product as a Sealy product unless it is a Sealy product manufactured in accordance with the provisions of this contract; not to use the Sealy name in connection with Licensee's advertisement or sales other than in the advertisement and sale of Sealy products; to use letterheads, billheads, invoices, envelopes, business cards bearing the name "Sealy" in the transaction of business involving Sealy products; not to use Licensee's own name or corporate name (other than "Sealy") or any private brand, label, or slogan, letterheads, billheads, or invoices in connection with the advertisement or sale of Sealy products; and except in the sale of Sealy products within the territory covered by this License, Licensee will in no manner trade on the prestige of Sealy or make use of the fact that Licensee is a manufacturer of Sealy merchandise and a Sealy Licensee; it being expressly agreed [fol. 1266E] that Licensee shall not use the Sealy name, prestige, nor the fact that party of the second part is a Sealy Licensee except in the territory covered by this contract; and it being expressly understood and agreed that a violation of this provision shall be a breach of this contract and shall give Sealy the right to terminate this contract and License.

IV:5. To permit Sealy to exercise supervision and control over the manufacture, advertising, and sale by Licensee of Sealy products, so as to insure the product's uniformity and the Licensee's conformity with Sealy's specifications, processes, and methods of manufacture and sale by Licensee; and, in order to better enable Sealy to exercise such supervision and control, to furnish Sealy specimens of manufactured products, samples of materials used in the manufacture, and to afford representatives of Sealy access, at reasonable hours, to its plant, warehouse,

and records appertaining to the manufacture and sale of Sealy products.

IV:6. To keep detailed, accurate, and complete records of all Sealy products and all other products of like kind manufactured by Licensee during each month in Licensee's exclusive territory; and to afford to Sealy and its representatives access, at reasonable hours, to all of its records for the purpose of inspection copy or audit of said records; and to send to Sealy on or before the 15th day of each month a true and complete report showing the quantity of all products manufactured and sold by Licensee during the preceding month.

IV:7. To affix to all Sealy products sold and manufactured, and/or sold and/or shipped in Licensee's territory, the form of label as prescribed by Sealy; to place on Sealy products in the form and at the position thereon, as prescribed by Sealy, such other or supplementary labels as Sealy may, from time to time, determine; and not to affix or attach a label containing the name "Sealy" in any form, nor Sealy's label to a product other than one manufactured by Licensee in accordance with this contract.

IV:8. To obtain Sealy's labels in the following and in no other manner:

Licensee shall send to Sealy a duly executed order for the kind of labels desired. Sealy will then promptly transmit the order to the label manufacturer or distributor selected by Sealy for fulfillment. Licensee will pay to the label manufacturer or distributor the costs of the labels according to the terms of the invoice.

IV:9. If, during the term of this contract, Licensee has obtained Sealy's consent to use the term "Sealy" in its corporate or business name, Licensee will upon the expiration of this contract, either according to its term or sooner terminated under its provisions, immediately eliminate from its corporate or business name the term "Sealy", and upon Licensee's failure to do so, Sealy shall have the right to obtain specific relief by injunction in accordance with this provision but such right shall be cumulative and not exclusive of any other right which Sealy may have for Licensee's breach of this provision of the contract.

IV:10. That Sealy's patents, copyrights, trademarks, tradenames, slogans, and processes are valid and owned by Sealy, and that Licensee will not itself commit, aid, abet, nor assist, any other person, partnership, association, or corporation in committing any act which might in any wise infringe on any of said patents, copyrights, trademarks, tradenames, slogans, or processes.

IV:11. To make no disclosure, except to its own employees using the same, of any and all manufacturing processes and formulae, or machinery used for the manufacture of Sealy products and Sealy's methods of sale: and to make no disclosure of such manufacturing processes and formulae or the machinery used for the manufacture of Sealy products and Sealy's methods of sale after the termination of this license.

IV:12. To perform in good faith each and every covenant of this agreement.

[fol. 1267E]

V

Royalty and Charges to be Paid by Licensee under This Contract

V:1. As a consideration for its exclusive right to manufacture and sell Sealy products in accordance with Sealy specifications and Sealy methods and processes, and to use Sealy trademarks, tradenames, and slogans, Licensee shall pay to Sealy on the 15th day of each succeeding month 3% of all of Licensee's gross sales, whether such sales are of Sealy products or other like products which Licensee manufactures, except sales of Licensee's manufactured products other than Sealy products to bona fide jobbers and mail order houses approved by Sealy or to a United States Governmental Agency or the Agency of any State or Political subdivision thereof, it being stipulated that such royalty or percentage on gross sales shall be not less than the sum of \$ per month.

V:2. Licensee agrees to pay for all advertising material and other displays furnished by Sealy, or by sources designated by Sealy, upon the order of Licensee within thirty (30) days from the date when furnished. It is, however, understood and agreed that Sealy, without order of the Licensee, may ship advertising materials and displays which Sealy deems necessary for the promotion and

welfare of its business to Licensee not exceeding the sum of Four Hundred Fifty (\$450.00) and 00/100 Dollars per annum, and such items so shipped shall be paid for by Licensee within thirty (30) days from the date of shipment.

V:3. Licensee agrees to pay for all material, ticking, cotton, and supplies furnished by Sealy or Sealy's sources of supply upon terms stipulated by Sealy. Should there be any excess of such materials on purchases by Sealy, such excess may be pro-rated by Sealy among the Sealy Licensees based upon the area served by their respective plants and in accordance with the proportion that the Licensee's volume of Sealy business bears to the total volume of Sealy business of all Licensees.

V:4. Licensee agrees to pay to Sealy on demand the sum of Ten (\$10.00) and 00/100 Dollars for each Sealy product manufactured, sold, or delivered by it outside of the territory allocated to Licensee under this contract; and Licensee further agrees to pay to Sealy on demand the sum of Ten (\$10.00) and 00/100 Dollars for each Sealy product sold if Licensee knows or should know that the purchaser intends to resell or deliver the same for resale out of Licensee's exclusive territory; and further, Licensee agrees to pay Ten (\$10.00) and 00/100 Dollars for each Sealy product sold or delivered to any mail order house or jobber without Sealy's written consent; and further, Licensee agrees to pay to Sealy on demand the full retail price of any Sealy product manufactured or sold by it to any purchaser, on the production of evidence satisfactory to Sealy that such product was not made in accordance with this contract, or that it was mislabeled or misbranded, or that inferior materials or workmanship were used; and this covenant shall be of full force and effect regardless of the termination of other covenants of this contract.

VI

Covenants of Both Parties

Both parties hereto covenant and agree:

VI:1. That within ninety (90) days from any termination of this contract, Sealy shall have the right to repurchase at Licensee's original cost the whole or any part of

Sealy labels purchased by Licensee, the whole or any part of the manufactured or partially manufactured Sealy products, raw materials, or supplies, purchased by Licensee for the manufacture of Sealy products.

VI:2. In the event Licensee becomes insolvent, or a petition is filed by or against Licensee under the provisions of the Federal Bankruptcy Act (which shall include proceedings for reorganization, adjustments with creditors, or any other form or relief under the Bankruptcy Act of the United States), or if Licensee suffers or permits a Receiver to be appointed in any insolvency proceedings in a State or Federal Court, or makes an assignment of the whole or any portion of its assets for the benefit of its creditors, or in the event Licensee suspends or discontinues its business operations for a period of three (3) months, then upon the happening of either one of said events this contract shall be terminated and at an end.

[fol. 1268E] VI:3. a. That if either party defaults in the performance or violates any provision of this contract, unless otherwise provided, the other must give thirty (30) days' written notice of its intention to terminate this contract by reason of such violation or default, and if such default or violation is remedied during such thirty (30) day period, then this contract shall again be of full force and effect; and if not so remedied this contract shall be at an end upon the expiration of such thirty (30) day period.

VI:3. b. Should Licensee fail or refuse within the time provided in Paragraph VI:3 (a) to remedy any default or violation and thus cause a termination of this contract, then Licensee agrees to pay to Licensor as liquidated damages for such breach a sum equal to the amount of royalty paid by Licensee during the twelve months next preceding the date of the termination of this contract.

VI:4. Licensee may voluntarily terminate this contract after giving Sealy two (2) months' notice of its intention so to terminate, and the contract shall be at an end at the expiration of the two (2) months' period, and contemporaneously with the giving of such notice of termination Licensee will pay to Sealy as consideration for its release from this contract a sum equal to twelve (12) months' minimum royalty.

VI.5. After the termination of this contract for any reason Licensee agrees that he will not in the manufacture or sale of any of its products use any Sealy patents, secret methods, specifications or processes which Licensee has at any time used in the manufacture or sale of Sealy products.

VI.6. Failure of Sealy to notify Licensee of any breach or violation of this contract shall not constitute a waiver of any such breach or violation or of Sealy's right to terminate this contract at a later date because of such breach or violation, unless the Licensee shall have remedied such breach or violation within thirty (30) days from the date of notice from Sealy.

VI.7. This contract may not be assigned, nor any rights thereunder transferred, in any manner, by Licensee without Sealy's written consent; and such consent must be procured in the event Licensee is a corporation and the majority or controlling stock therein is sold to any person, firm, or corporation.

VI.8. That Licensee has no authority to bind Sealy upon any contract or obligation whatsoever. Nothing in this contract shall be construed as constituting Licensee as agent for Sealy for any purpose other than the appointment of Licensee to use and utilize the patents, trademarks, tradenames, slogans, processes, and specifications as provided in this license.

VI.9. Sealy shall not be liable to any person, firm, or corporation, for any acts or omissions of Licensee or for unsatisfactory merchandise, made or sold by Licensee, or for any misrepresentations made by Licensee.

VII

All notices provided for or to be given under this contract shall be in writing.

VIII

This contract shall be separable, and if any portion hereof shall be held invalid for any reason, the remainder shall not thereby be invalidated but shall remain in full force and effect.

IX

Where ever the term "Sealy Board of Directors" is used, such term shall be deemed to include the Board of Directors or the Executive Committee thereof.

X

This contract shall be governed by the laws of the State of Illinois, and shall not become binding upon or effective until a copy thereof, executed by Licensee, shall be received by Sealy at its Offices in Chicago, Illinois.

[fol. 1269E]

XI

Licensee may, at its option, renew this contract for an additional period of three (3) years from the expiration date of the aforesaid contract, upon the terms and conditions then to be agreed upon with Sealy.

In Witness Whereof, the parties hereto, each acting through its duly authorized officers, have hereunto set their hands and affixed their seals, this, the day and year first above written.

Sealy, Incorporated, (Seal), by: Jacob R. Haas,
President.

Attest:

H. B. Fouts, Secretary.

Eagle Mattress Co., Inc., (Seal), by: Samuel
Wiener, President.

Attest:

Lillian Feldman, Secretary.

[fol. 1270E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1031

This is an amendment to the License Agreement dated the — day of October, 1947, between Sealy, Incorporated, a Delaware corporation, herein called "Sealy", and Sealy Mattress Co. of Kansas City, Inc. (a corporation) is herewith entered into between Sealy, Incorporated, hereinafter called "Sealy" and Sealy Mattress Co. of Kansas City, Inc., hereinafter called the "Licensee", this — day of October, 1947, becoming a part of the License Agreement, hereinbefore referred to, the consideration being the payment by each of the parties to the other the sum of One (\$1.00) Dollar and other valuable considerations, the receipt whereof is hereby acknowledged, and provides:

1

Licensee, or — and — its stockholders, have heretofore purchased none shares of the capital stock of Sealy, Incorporated, at \$ — per share, and Licensee, or — and —, its stockholders, are now the owners of said shares of capital stock.

2

Licensee is about to purchase from Sealy, Incorporated, eight shares of its capital stock at and for the sum of \$105.00 per share.

3

As a part of the consideration for the purchase of said shares of stock set forth in Paragraph (2) next above, Licensee agrees with Sealy that upon the termination of the License held by Licensee, Sealy shall have the right and option to purchase all of the shares of the capital stock of Sealy, Incorporated owned by Licensee and/or any of its stockholders, in accordance with the following formula:

(a) If the License or any extension thereof shall expire, and Licensee at the date of expiration shall not be in default in the performance of any of the provisions of the License Agreement, Sealy shall within thirty (30) days from the date of expiration of the License or any

extension thereof, pay for said shares the purchase price paid therefor by Licensee and/or its stockholders, and if Licensee and/or its stockholders at such time have a bonafide offer to sell the shares of stock at more than such original price paid therefor by Licensee and/or its stockholders, and shall exhibit to Sealy satisfactory evidence of such offer, Sealy must within thirty (30) days exercise its right and option to purchase such shares at the price offered Licensee and/or its stockholders; and if [fol. 1271E] Sealy fails to exercise such option and right to purchase within thirty (30) days, then Licensee and/or its stockholders shall have the right to sell such shares freely and without restraint from Sealy.

(b) In the event the License Agreement between Sealy and Licensee is terminated by Sealy by reason of a failure or default by Licensee to perform promptly the covenants to be by the Licensee performed, then Sealy shall pay for such shares the price paid therefor by Licensee and/or its stockholders less any sums that may be due Sealy by reason of the failure or default of the Licensee to perform the covenants of the License Agreement within thirty (30) days from the date when said License is terminated; and in the event Sealy shall fail to exercise its right and option to purchase the shares under the terms of this paragraph and make the payment due thereunder within thirty (30) days, then Licensee and/or its stockholders shall have the right to sell such shares freely and without restraint from Sealy.

4

Licensee and/or its stockholders shall not, at any time, sell any of the shares of the capital stock of Sealy, Incorporated owned by it or its stockholders without first notifying and furnishing to Sealy complete evidence of the offer or offers which it or its stockholders have received and the terms thereof, including the name and address of the offeror, and Sealy shall have an option for thirty (30) days from the date of such notice to purchase the shares of capital stock of Sealy, Incorporated on the same terms as those contained in the offer which Licensee and/or its stockholders have received.

5

Any sale or transfer of said shares by Licensee and/or its stockholders contrary to the terms hereinbefore set forth shall be null and void, and Sealy shall have the right to refuse the transfer of such shares on its books in the event the terms of the foregoing agreement have not been complied with by Licensee and/or its stockholders.

6

The certificates for the shares of the capital stock of Sealy, Incorporated now held by Licensee and/or its stockholders, and the certificates hereafter issued by Sealy, Incorporated shall have the following clause imprinted thereon: "Subject to the provisions of the License Agreement and any amendment thereto between Sealy, Incorporated and Sealy Mattress Co. of Kansas City, Inc. [fol.1272E] Licensee, and the holder of this certificate and any transferee thereof shall be bound thereby".

In Witness Whereof, Sealy, Incorporated and Sealy Mattress Co. of Kansas City Licensee, the parties acting through their duly authorized officers, have hereunto executed this amendment to the License Agreement hereinbefore referred to.

Sealy, Incorporated, (Seal.), by [Copy illegible.]

Sealy Mattress Co. of Kansas City, Inc., by C. B. Kaplan, Licensee Sec.

The undersigned stockholders of Sealy Mattress Co. of Kansas City, Inc. the Licensee, have read the provisions of this amendment to the License Agreement between Sealy, Incorporated and Sealy Mattress Co. of Kansas City the Licensee, dated the 15 day of October, 1947, and herewith signify their acceptance of the provisions of this amendment to the License Agreement and agree to be bound thereby.

Edwin J. Canter, Isadore Gale, Joseph Hartman,
Stockholders of Sealy Mattress Co. of Kansas
City, Inc.

[fol. 1273E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1051

This Agreement, Made and entered into this, the 27 day of September, 1948, by and between Sealy, Incorporated, a Delaware Corporation, hereinafter called "Sealy", party of the first part, and Sanitary Bedding Company a partnership consisting of Ross S. Rosenberg, Mrs. Rebecca Rosenberg, Isadore Segal, Saralee (Mrs. Bernard) Kegan, hereinafter called "Licensee", party of the second part;

Witnesseth:

Whereas, Sealy is the owner of certain patents, trademarks, tradenames, copyrights, slogans, secret methods, processes, and specifications, for the manufacture and sale of mattresses, studio couches, sofa beds, bed springs, bedding, and similar products, and from time to time does originate and develop patents, secret methods, processes, and specifications (which may or may not be copyrighted) for the manufacture of the above enumerated products, and does originate trademarks, tradenames, copyrights, slogans, and methods for the sale of such products, and has extensively advertised the name "Sealy" and its trademarks, tradenames, and slogans; and,

Whereas, Licensee desires to manufacture and sell to retail stores Sealy products within an exclusive territory under the terms and conditions hereinafter set forth, and to use Sealy's patents, trademarks, tradenames, copyrights, slogans, secret manufacturing methods, processes, and specifications; to use Sealy's secret methods for merchandising and selling, and to obtain the benefit of Sealy's advertising of its name, its trademarks, tradenames, copyrights, and slogans;

Now, Therefore, for and in consideration of the covenants and agreements from one party to the other party, as hereinafter set forth, and of their prompt and punctual performance by each party, and of other valuable consideration, the receipt of which is hereby acknowledged, It Is Agreed:

I

Definitions

I:1. The term "Sealy products" is defined as mattresses, including ensembles, studio couches, divans, studio lounge beds, sofa beds, and any other upholstered furniture convertible to or usable as a bed, chairs matching the last four (4) mentioned items, bed springs, box springs, foundation units, pillows, cushions, comforts, similar and related articles, and such other items which are patented or the tradenames thereof registered. This definition of "Sealy products" shall include such manufactured articles known as "Sealy" or "Crestline" products which have affixed thereto Sealy or Crestline trademarks, tradenames, or slogans defined in Paragraph I:2 of this Article. Except as specifically hereinafter provided in this contract, the term "Sealy products" shall include both the Sealy and Crestline manufactured products.

I:2. Sealy trademarks, tradenames, or slogans, whether or not registered, are defined as "Crestline", "Sealy Rest", "Sealy Tuftless", "Cotton Boll", "Truease", "Texlan", "Luxel", "Sunspun", "Durolife", "Posture Pillow", "Fast-Asleep", "Sleep Charm", "Natural Rest", "Air Vent", "Sleep Joy", "Sealy Kraft", "Airlite", "Enchanted Nights", "Airwoven", "Vital Third", "A Giant Pillow for the Body", "Sleeping on a Sealy is like Sleeping on a Cloud", "Prize Winner", and such other trademarks, tradenames, and slogans as Sealy may hereafter, from time to time, use and disclose to Licensee. Licensee may be permitted by the Board of Directors of Sealy, Incorporated, to use any other trademark, tradename, or slogan which does not infringe upon any trademark, tradename, or slogan used by Sealy, and if permission is granted by Sealy to use any such trademark, tradename, or slogan, such trademark, tradename, or slogan shall become the property of Sealy.

[fol. 1274E] I:3. "Territory" is defined as the area in which the Licensee shall have the right, subject to the covenants and conditions hereinafter set forth, to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and for such purpose only to use Sealy patents,

trademarks, tradenames, copyrights, slogans, methods, processes, and specifications.

I:4. "Licensee" is defined as the person, firm, or corporation, to whom Sealy allocates a specified area in which such person, firm, or corporation only shall manufacture and sell Sealy products to retail stores, hospitals, and hotels, and for such purpose shall have the exclusive right to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, and use Sealy labels.

I:5. "Specifications" are defined as the type, quality, and quantity of materials which Sealy determines, from time to time, are to be used in the manufacture of "Sealy products".

I:6. "Methods and Processes" are defined as Sealy's methods and processes of manufacture and sale, whether or not patented, and which are furnished by Sealy to its Licensees for the manufacture and sale of Sealy products.

II

Licensee's Territory and Term of Contract and Renewal

II:1. Party of the second part is named the sole and exclusive Licensee under this agreement, and shall have the sole right to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and use Sealy labels affixed to such products in the territory described in Paragraph II:2 for the term of this License or any extension thereof.

II:2. The territory in which Licensee shall have the sole right to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications is as follows: Entire State of Minnesota; entire State of North Dakota; following counties in State of Wisconsin—Douglas, Washburn; Burnette, Polk, Barron, Dunn, St. Croix, Pierce, Pepin, Buffalo; following counties in the State of South Dakota—Roberts, Marshall, Brown, McPherson, Campbell, Corson, Ziebach, Dewey, Walworth, Edmunds, Spink, Day, Grant, Deuel, Codington, Hamlin, Clark, Faulk, Potter, Armstrong,

Sully, Hyde, Hand, Beadle Kingsbury, Brookings, Moody, Lake, Miner, Sanborn, Jerauld, Buffalo, Hughes, Lyman, Stanley, Jones, Jackson, Haakon.

II:3. The term of this contract shall be for three (3) years beginning the 1st day of January 1949 and ending the 31 day of December 1951, unless sooner terminated by the agreement of the parties or under the provisions of this License.

II:4. If Licensee shall well and truly perform each and every covenant of this contract during the full time thereof, time being of the essence, and if Licensee's selling and manufacturing facilities and efforts are not during such period deemed inadequate by a two-thirds majority vote of Sealy's Board of Directors, then Licensee shall be entitled to one renewal of this License Agreement for a period of five (5) years from the date of its expiration, Sealy reserving the right to increase the minimum royalty to be paid by Licensee a maximum of twenty-five (25) percent of the minimum royalty provided in Paragraph V:1(b). Notice of the exercise of the right of renewal shall be given by Licensee to Sealy at least six (6) months prior to the expiration date of this Contract.

II:5. If Licensee shall well and truly perform during the full period of this contract and/or the first renewal thereof for five (5) years each and every covenant of this Contract and of the renewal contract, time being of [fol. 1275E] the essence, and if Licensee's selling and manufacturing facilities and efforts are not during the period of this Contract or the first renewal thereof deemed inadequate by a two-thirds majority vote of Sealy's Board of Directors, then the first renewal of this License shall remain in full force and effect so long as Licensee shall well and truly perform each and every covenant of this Agreement and of the first renewal thereof, Sealy reserving the right at the beginning of each five (5) year period after the expiration of the first renewal of this License to increase the minimum royalty to be paid by Licensee a maximum of twenty-five (25) percent of the amount of minimum royalty being paid by Licensee during the next preceding five (5) year period.

III

Sealy's Covenants and Agreements

Sealy covenants and agrees while this contract is in full force and effect:

III:1. To permit Licensee the use of Sealy patents, copyrights, trademarks, tradenames, slogans, exclusive rights, and licenses in the manner and form prescribed by Sealy in the manufacture and sale of Sealy products.

III:2. To furnish Licensee true and correct copies of specifications presently used in the manufacture of Sealy products. Such specifications may be changed at any time by Sealy, and, when changed, written notice thereof together with the new specifications shall be furnished by Sealy to Licensee, and after thirty (30) days from the date of such notice shall become the specifications to which all Sealy products thereafter manufactured by Licensee must conform. The Board of Directors and/or President are authorized to grant Licensee sufficient time beyond the thirty (30) day period, hereinbefore provided, within which to dispose of inventories rendered obsolete by changes in specifications.

III:3. To furnish Licensee full information concerning its methods and processes of manufacture and sale. Such methods and processes may be changed, from time to time, by Sealy, and, when changed, written notice thereof, together with the new methods and processes shall be furnished by Sealy to Licensee, and after thirty (30) days from the date of such notice shall become the methods and processes to which all Sealy products thereafter manufactured by Licensee must conform. If any of such processes or methods, furnished by Sealy to Licensee, should in any wise violate any of the laws, rules, or regulations of the United States Government or any of its Agencies, or the laws of the State in which Licensee manufactures or sells, then such processes or methods shall not be binding upon or enforceable against Licensee. The Board of Directors and/or President are authorized to grant Licensee sufficient time beyond the thirty (30) day period, hereinbefore

provided, within which to dispose of inventories rendered obsolete by changes of process or methods of manufacture.

III:4. To defend at Sealy's expense any and all suits against Licensee for patent or trademark infringement because of Licensee's use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the manufacture of Sealy products, provided:

(a). That the said Sealy products are manufactured in accordance with Sealy specifications and process of manufacture herein defined; and,

(b). As conditions precedent for such protection Licensee shall give notice:

(1). By registered mail to Sealy at its office in Chicago, Illinois, promptly, of any claim of infringement against Licensee because of Licensee's use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the manufacture of Sealy [fol. 1276E] products, and in such notice shall advise Sealy all facts concerning such alleged claim for infringement; and,

(2). In the event any suit should be filed against Licensee based upon such alleged infringement, to forward to Sealy at its office in Chicago, Illinois, the complaint, petition, or copy thereof, in said cause within two (2) days after service of said complaint or petition upon Licensee.

III:5. Sealy shall in no event incur any liability to Licensee because of any claim, demand, or suit for infringement until such liability shall have been finally determined in a court of last resort after actual trial, and unless Sealy shall have been given the notice, as herein provided, of the filing of any claim, demand, or suit against Licensee for such alleged infringement.

III:6. Sealy will not manufacture nor sell, nor will it without the consent of Licensee contract with or permit any other person, partnership, association, or corporation, to manufacture or sell Sealy products within the territory allocated to Licensee so long as this contract is in force; and Sealy will prevent, insofar as it is legally permitted,

the manufacture, sale or shipment of Sealy products in said territory by any other person, partnership, association, or corporation, except that Sealy, directly or through subsidiary, or by contract with another manufacturer shall have the right to manufacture and sell bed-springs, sofa and divan springs, and springs of all types within the territory covered by this contract to Licensee, and if, for any reason, the Licensee in the territory does not desire to purchase such springs, or any part thereof then to sell such springs to other persons, firms, or corporations in the territory covered by this contract, but not ~~as~~ Sealy products nor bearing Sealy labels.

III:7. Sealy will pay to Licensee as liquidated damages Ten (\$10.00) and 00/100 Dollars for each Sealy product sold or shipped by Sealy into Licensee's exclusive territory; and Sealy will pay Ten (\$10.00) and 00/100 Dollars, less the cost of collection for each such article sold or shipped in Licensee's exclusive territory by any person, partnership, association, or corporation having in force a contract with Sealy identical with or similar to this contract; provided that Sealy has theretofore collected said Ten (\$10.00) and 00/100 Dollars for each such article from said person, partnership, association, or corporation manufacturing or selling such articles. But this provision shall not apply to the sale of Furniture Market Samples of Sealy, Incorporated, or to those products excepted in Paragraph III:6 hereof.

III:8. To permit Licensee, upon written request, to use the term "Sealy" in its corporate or business name, but only in connection with the manufacture and sale of Sealy products and not for the manufacture and sale of any other products.

III:9. To use and expend at least fifty (50) percent of the amount paid it as royalties under Paragraph V:1 of this contract and other similar contracts which Sealy has with its Licensees for national and other advertising, merchandising, and general sales promotion of Sealy products throughout the United States, it being understood that the amount expended by Sealy for (a) salary, office, and administrative costs, and (b) for payments to Licensees for Sealy's share of local advertisement in Licensee's territory, are considered a part of such advertising, merchandising, and sales promotion expense. The type of

advertising, merchandising, and sales promotion, and the amount expended for each of such items and when such expenditure shall be made, shall be determined by Sealy's Board of Directors.

IV

Licensee's Covenants and Agreements

Licensee covenants and agrees:

[fol. 1277E] IV:1. To manufacture, during the term of this agreement or any renewal thereof, at Licensee's own expense, Sealy products, in the designated territory, strictly in accordance with Sealy specifications, patents, processes, exclusive rights, and licenses now owned or controlled, or hereafter acquired by Sealy, and not to use or utilize any of such specifications, patents, processes, exclusive rights, and licenses in the manufacture of any other product; and to comply with changes made by Sealy in the specifications of all Sealy products or in the methods or process of their manufacture within the time or extension thereof, as provided in Paragraph III:2 and III:3 hereof; and to sell Sealy products to retail stores and others subject to the provisions of this License.

IV:2. To use exclusively in the manufacture of Sealy products and for no other purpose, all items and/or supplies determined by Sealy to be exclusive for Sealy products, whether supplied by or procured through Sealy or purchased by the Licensee from any other source.

IV:3. To maintain in the designated territory such facilities for the manufacture of all Sealy mattresses and box springs (exclusive of Crestline mattresses) as shall be deemed adequate by a two-thirds majority vote of Sealy's Board of Directors; and to maintain such selling force for the sale of Sealy products as are manufactured by Licensee in constant and continuous effort in the designated territory as Sealy by a two-thirds majority vote of its Board of Directors shall deem adequate. Failure of Licensee to maintain such adequate manufacturing facilities and selling force shall be a violation of this License, and Sealy by a two-thirds majority vote of its Board of Directors shall have the right forthwith to terminate same by written notice addressed to Licensee at its last known place of business.

IV:4. That Licensee shall not:

(a). Manufacture, sell, or deliver within Licensee's exclusive territory any products competitive to Sealy which bear labels, trademarks, tradenames, or slogans of any nationally advertised competitor of Sealy.

(b). Sell or deliver any Sealy products outside of Licensee's exclusive territory, nor sell nor deliver Sealy products if Licensee knows or has reason to believe that the purchaser intends to resell or deliver the same for resale out of Licensee's exclusive territory; and,

(c). Sell or deliver any Sealy products to wholesalers, distributors, or mail order houses without first having obtained from Sealy permission to make such sale.

IV:5. To advertise Sealy products by means embodying and employing Sealy trademarks, tradenames, copyrights, slogans, or designs; and, upon request, either oral or in writing, by Sealy, to forthwith discontinue any advertising or form of advertisement in any newspaper, publication, or otherwise, which is objectionable to Sealy; not to advertise nor represent that any of Licensee's products other than Sealy products are manufactured or sold by the makers of Sealy products unless so authorized by the President of Sealy or its Board of Directors; and so authorized to discontinue said form of advertising immediately upon request of Sealy or its President, not to advertise nor represent a product as a Sealy product unless it is a Sealy product manufactured in accordance with the provisions of this contract; not to use the Sealy name in connection with Licensee's advertisement or sales other than in the advertisement and sale of Sealy products; to use letterheads, billheads, invoices, envelopes, business cards bearing the name "Sealy" in the transaction of business involving Sealy products; not to use Licensee's own name or corporate name (other than "Sealy") or any private brand, label, or slogan, letterheads, billheads, or invoices in connection with the advertisement or sale of Sealy products; and except in the sale of Sealy products within the territory covered by this License, Licensee will in no manner trade on the prestige of Sealy nor make use of the fact that Licensee is a manufacturer of Sealy merchandise and a Sealy Licensee; it

being expressly agreed that Licensee shall not use or trade upon the Sealy name, prestige, nor the fact that the party [fol. 1278E] of the second part is a Sealy Licensee except in the territory covered by this contract and in connection with the sale of Sealy products; and it being expressly understood and agreed that a violation of this provision shall be a breach of this contract, and shall give Sealy the right to terminate this contract and license.

IV:6. To permit Sealy to exercise supervision and control over the manufacture, advertising, and sale by Licensee of Sealy products, so as to insure Licensee's conforming to Sealy's specifications, processes, and methods of manufacture and sale of Sealy products and uniformity in said products; and in order to better enable Sealy to exercise such supervision and control, Licensee agrees to furnish Sealy specimens of manufactured products, samples of material used in manufacturing, and to afford representatives of Sealy, including Sealy's engineer, access at reasonable hours to its plant, warehouse and records appertaining to the manufacture and sale of Sealy products. Sealy's engineer shall visit Licensee's plant at least once each year for a period not exceeding six (6) days, the expense for the engineer's service, including his compensation, to be paid for by Licensee. If Licensee requests an additional visit or visits by Sealy's engineer during any yearly period of this License (beginning January 1st of each year), the expense of such engineer, as hereinafter provided, shall be paid by Licensee; otherwise, no charge shall be made upon Licensee for such additional visit or visits by Sealy's engineer.

IV:7. To keep detailed, accurate, and complete records of all Sealy products and all other products of like kind manufactured by Licensee during each month in Licensee's exclusive territory; and to afford to Sealy and its representatives access, at reasonable hours, to all of its records for the purpose of inspection, copy, or audit of said records; and to send to Sealy on or before the 15th day of each month a true and complete report showing the quantity of all products subject to royalty payments manufactured and sold by Licensee during the preceding month.

IV:8. To affix to all Sealy products sold and manufactured, and/or sold and/or shipped in Licensee's territory, the form of label as prescribed by Sealy; to place on

Sealy products in the form and at the position thereon, as prescribed by Sealy, such other or supplementary labels as Sealy may, from time to time, determine; and not to affix or attach a label containing the name "Sealy" in any form, nor Sealy's label to a product other than one manufactured by Licensee in accordance with this contract.

IV:9. To purchase from Sealy and to pay Sealy therefor the labels designated by Sealy to be affixed to Sealy products.

IV:10. If, during the term of this contract, Licensee has obtained Sealy's consent to use the term "Sealy" in its corporate or business name, Licensee will, upon the expiration of this contract, either according to its terms or sooner terminated under its provisions, immediately eliminate from its corporate or business name the term "Sealy", and upon Licensee's failure to do so, Sealy shall have the right to obtain specific relief by injunction in accordance with this provision, but such right shall be cumulative and not exclusive of any other right which Sealy may have for Licensee's breach of this provision of the contract.

IV:11. That Sealy's patents, copyrights, trademarks, tradenames, slogans, and processes are valid and owned by Sealy, and that Licensee will not itself commit, aid, abet, nor assist, any other person, partnership, association, or corporation in committing any act which might in any wise infringe on any of said patents, copyrights, trademarks, tradenames, slogans, or processes.

IV:12. To make no disclosure, except to its own employees using the same, of any and all manufacturing processes and formulae, or machinery used for the manufacture of Sealy products and Sealy's methods of sale; and to make no disclosure of such manufacturing processes and formulae or the machinery used for the manufacture of Sealy products and Sealy's methods of sale after the termination of this License.

[fol. 1279E] IV:13. Licensee will not, during the term of this License, do any act or pursue any course of action either in manufacturing, selling, merchandising, or advertising Sealy products, or in the manufacture, sale, merchandising, or advertising of any other products manufactured by Licensee, which will be detrimental or injurious to Sealy, or which will, in any way, damage,

injure, deteriorate, or otherwise harmful affect the value of any of Sealy's trademarks, tradenames, slogans, patents, processes, or which will adversely affect Sealy, its trademarks, tradenames, slogans, patents, or processes, or the products of Sealy manufactured under such processes, or merchandised, advertised, or sold under any of Sealy's trademarks, tradenames, slogans, patents, or processes. The determination of whether any such act or series of acts shall have such harmful, injurious, deleterious, or adverse effect, shall rest in the sole determination of the Board of Directors of Sealy, and upon such Board's finding that Licensee has been guilty of any such act or acts, the Board may forthwith terminate the License, but said Board shall have the sole discretion to determine that the Licensee may continue upon its being satisfied that it would be to the interest of Sealy to permit such License to continue upon proof satisfactory to the Board that the act or acts complained of have been discontinued and that harmful effects have either been eradicated or were of such nature as to have no permanent ill effect upon Sealy, its products, trademarks, tradenames, slogans, patents, or processes.

IV:14. To comply with such reasonable rules and regulations not inconsistent with the terms of this License which Sealy may, from time to time, establish for the manufacture and sale of Sealy products and the operation of Licensee's business as a Sealy Licensee.

IV:5. To perform in good faith each and every covenant of this agreement.

V

Royalty and Charges to be Paid by Licensee under this Contract

V:1. As a consideration for its exclusive right to manufacture and sell Sealy products and to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, Licensee shall pay to Sealy the following royalty:

- (a). During the term of this contract in monthly installments on the 15th day of each succeeding month three (3) percent of all of Licensee's gross sales made during

the preceding month up to One Million (\$1,000,000.00) and 00/100 Dollars; and when the aggregate of the monthly sales in any one calendar year beginning January 1, 1949, have equalled One Million (\$1,000,000.00) and 00/100 Dollars, then two (2) percent of such gross sales from One Million (\$1,000,000.00) and 00/100 Dollars to Two Million (\$2,000,000.00) and 00/100 Dollars, then one (1) percent of such sales from Two Million (\$2,000,000.00) and 00/100 Dollars to Three Million (\$3,000,000.00) and 00/100 Dollars; and when the aggregate of such monthly sales in any one calendar year beginning January 1, 1949, have reached Three Million (\$3,000,000.00) and 00/100 Dollars, then two (2) percent on all sales above Three Million (\$3,000,000.00) and 00/100 Dollars; such percentage shall be of the gross sales within the licensed territory during each calendar year beginning January 1, 1949, and such royalty shall be paid upon sales of Sealy products or other like products, except sales of Licensee's manufactured products other than Sealy products to bona fide jobbers and mail order houses approved by Sealy or to a United States Governmental Agency or the Agency of any State or political subdivision thereof, it being stipulated that such monthly royalty or percentage on gross sales shall be not less than the sum of \$400.00 (Four hundred dollars) per month.

[fol. 1280E] It is further stipulated:

(a). That Licensee's gross sales do not include sales of any class of manufactured products herein defined as "New Sealy Products" for which Sealy has not issued specifications and processes at the time this License Agreement dated the 27 day of September, 1948, is made, and if thereafter and during the term of this License Agreement Sealy should issue specifications and processes for the manufacture of any new class of manufactured products (herein defined as "New Sealy Products") which Licensee then manufactures, Licensee shall pay royalty on its gross sales of such New Sealy Products and any like products manufactured by Licensee only in the event Licensee uses the Sealy specifications and/or processes and/or methods of merchandising or selling such new class of Sealy manufactured products herein defined as "New Sealy Products."

(b). The term "New Sealy Products" shall mean products other than the following: mattresses including ensembles, studio couches, divans, studio lounge beds, sofa beds, and any other upholstered furniture convertible to or usable as a bed, chairs matching the last four (4) mentioned items, bed springs, box springs, foundation units, pillows, cushions, comforts, similar and related articles, and such other items which are patented or the trade-names thereof registered.

(c). "Gross Sales" do not include P.M.'s, returns, allowances, and freight allowed customers.

(d). The term "bona fide jobbers and mail order houses" does not include any retail store outlet operated directly or indirectly by the jobber or mail order house, and any sale of Licensee's manufactured product to a retail store outlet operated directly or indirectly by a bona fide jobber or by a mail order house shall be included in Licensee's gross sales upon which the royalty, as hereinbefore provided, is to be paid by Licensee.

V:2. Licensee agrees to pay for all advertising material and other displays furnished by Sealy, or by sources designated by Sealy, upon the order of Licensee within thirty (30) days from the date when furnished. It is, however, understood and agreed that Sealy, without order of the Licensee, may ship advertising materials and displays which Sealy deems necessary for the promotion and welfare of its business to Licensee not exceeding the sum of Four Hundred Fifty (\$450.00) and 00/100 Dollars per annum, and such items so shipped shall be paid for by Licensee within thirty (30) days from the date of shipment.

V:3. Licensee agrees to pay for all material, ticking, cotton, and supplies furnished Licensee by Sealy or Sealy's sources of supply at prices and upon terms agreed upon between Sealy and Licensee.

V:4. Licensee agrees to pay to Sealy on demand the sum of Ten (\$10.00) and 00/100 Dollars: (a) for each Sealy product manufactured, sold, or delivered by Licensee outside of Licensee's exclusive territory; (b) for each Sealy product sold if Licensee knows or should have known that the purchaser intends to resell or deliver the same for resale outside of Licensee's exclusive territory;

and (c) for each Sealy product sold or delivered to any mail order house or jobber without Sealy's written consent. Licensee further agrees to pay to Sealy on demand the full retail price of any Sealy product manufactured or sold by Licensee to any purchaser, on the production of evidence satisfactory to Sealy that such product was not made in accordance with the Sealy specifications, or if such product was mislabeled or misbranded, or inferior materials or workmanship was used in its manufacture; and this agreement shall be of full force and effect after the termination of this contract.

V:5. Licensee agrees to pay to Sealy charges for the services rendered Licensee by Sealy's engineer at a per diem rate fixed by the Board of Directors for such service, which shall include the traveling and hotel expenses of the engineer.

[fol. 1281E]

VI

Covenants of Both Parties

Both parties hereto covenant and agree:

VI:1. That within ninety (90) days from any termination of this contract, Sealy shall have the right to repurchase at Licensee's original cost the whole or any part of Sealy labels purchased by Licensee, the whole or any part of the manufactured or partially manufactured Sealy products, raw materials, or supplies, purchased by Licensee for the manufacture of Sealy products.

VI:2. In the event Licensee becomes insolvent, or a petition is filed by or against Licensee under the provisions of the Federal Bankruptcy Act (which shall include proceedings for reorganization, adjustments with creditors, or any other form of relief under the Bankruptcy Act of the United States), or if Licensee suffers or permits a Receiver to be appointed in any insolvency proceedings in a State or Federal Court, or makes an assignment of the whole or any portion of its assets for the benefit of its creditors, or in the event Licensee suspends or discontinues its business operations for a period of three (3) months, then upon the happening of either one of said events this contract shall terminate and be at an end.

VI:3(a). Except as otherwise herein provided, if Licensee defaults in the performance or violates any provision of this Contract, Sealy must give thirty (30) days' notice of its intention to terminate this contract by reason of such violation or default, and if such default or violation is remedied during such thirty (30) day period, then this contract shall again be of full force and effect, and if not so remedied to the satisfaction of a two-thirds majority vote of Sealy's Board of Directors, then this contract shall be at an end at the expiration of such thirty (30) day period. Licensee shall be given an opportunity to be heard with respect to such default or violation prior to action being taken thereon by Sealy's Board of Directors.

VI:3(b). Should Licensee fail or refuse within the time and in the manner provided in Paragraph VI:3(a) to remedy any such default or violation and thus cause Sealy to declare this contract to be at an end, then Licensee agrees to pay Licensor as liquidated damages for such breach a sum equal to the amount of royalty paid by Licensee during the twelve (12) months next preceding the date of the termination of this contract.

VI:3(c). Should Licensor default in the performance or violate any provision of this contract, Licensee must give thirty (30) days' written notice of its intention to terminate this contract by reason of such violation or default, and if such default or violation is remedied during such thirty (30) day period, then this contract shall again be of full force and effect, and if not so remedied, then this contract shall be at an end at the expiration of such thirty (30) day period.

VI:4(a). Licensee may voluntarily terminate this contract after giving Sealy two (2) months' notice of its intention so to terminate, and the contract shall be at an end at the expiration of the two (2) months' period, and contemporaneously with the giving of such notice of termination, Licensee will pay to Sealy as consideration for its release from this contract a sum equal to twelve (12) months' minimum royalty.

VI:4(b). In the event Licensee voluntarily or involuntarily suspends or discontinues its business operations for a period of three (3) months, Sealy shall have the right to recover as liquidated damages for such breach a sum

equal to the amount of royalty paid by Licensee during the twelve (12) months next preceding the date when Licensee began the suspension or discontinuance of its business, or a sum equal to twelve (12) months' minimum royalty, as provided in this contract, whichever is greater. [fol. 1282E] VI:5. After the termination of this contract for any reason, Licensee agrees that it will not in the manufacture or sale of any of its products use any Sealy patents, secret methods, specifications, or processes which Licensee has at any time used in the manufacture or sale of Sealy products.

VI:6. Failure of Sealy to notify Licensee of any breach or violation of this contract shall not constitute a waiver of any such breach or violation or of Sealy's right to terminate this contract at a later date because of such breach or violation.

VI:7. This contract is a personal contract between the parties hereto, and may not be assigned or any rights thereunder transferred in any manner by Licensee without Sealy's written consent; and such consent must be procured in the event Licensee is a corporation, and there is any change in the ownership of stock therein whereby the voting control of the corporation is vested in persons other than those holding such voting control therein as of the date of this contract, except there shall be deemed no change in the voting control of the corporation Licensee in the event such voting control is exercised by the Executors or Administrators of a deceased stockholder or stockholders, or by a Trustee or Trustees under a testamentary or inter vivos trust executed by a stockholder or stockholders for the benefit of relatives within the second degree.

VI:8. That Licensee has no authority to bind Sealy upon any contract or obligation whatsoever. Nothing in this contract shall be construed as constituting Licensee as agent for Sealy for any purpose other than the appointment of Licensee to use and utilize the patents, trademarks, tradenames, slogans, processes, and specifications as provided in this license.

VI:9. Sealy shall not be liable to any person, firm, or corporation for any acts or omissions of Licensee or for

unsatisfactory merchandise, made or sold by Licensee, or for any misrepresentations made by Licensee.

VII

All notices provided for to be given under this contract shall be in writing.

VIII

This contract shall be separable, and if any portion hereof shall be held invalid for any reason, the remainder shall not thereby be invalidated but shall remain in full force and effect.

IX

Except where Sealy's Board of Directors is specifically required to act under any provision of this contract, the term "Sealy's Board of Directors" shall be deemed to include the whole Board of Directors or the Executive Committee thereof.

X

This contract shall be governed by the laws of the State of Illinois, and shall not become binding upon or effective until a copy thereof, executed by Licensee, shall be received by Sealy at its office in Chicago, Illinois.

[fol. 1283E] In Witness Whereof, the parties hereto, each acting through its duly authorized officers, have hereunto set their hands and affixed their seals, on this, the day and year first above written.

Sealy, Incorporated, (Seal), by: E. H. Bergmann,
President.

Attest:

R. G. Culp, Secretary.

Sanitary Bedding Company, (Seal), by: Jim S.
Ruby, President.

Attest:

Lucile Eastman, Secretary.

[fol. 1284E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1061

This Agreement, Made and entered into this, the 1st day of July, 1950, by and between Sealy, Incorporated, a Delaware Corporation, hereinafter called "Sealy", party of the first part, and U. S. Bedding Company, Memphis, Tennessee a corporation of Georgia, hereinafter called "Licensee", party of the second part;

Witnesseth:

Whereas, Sealy is the owner of certain patents, trademarks, tradenames, copyrights, slogans, secret methods, processes, and specifications, for the manufacture and sale of mattresses, studio couches, sofa beds, bed springs, bedding, and similar products, and from time to time does originate and develop patents, secret methods, processes, and specifications (which may or may not be copyrighted), for the manufacture of the above enumerated products, and does originate trademarks, tradenames, copyrights, slogans, and methods for the sale of such products, and has extensively advertised the name "Sealy" and its trademarks, tradenames, and slogans; and,

Whereas, Licensee desires to manufacture and sell to retail stores Sealy products within an exclusive territory under the terms and conditions hereinafter set forth, and to use Sealy's patents, trademarks, tradenames, copyrights, slogans, secret manufacturing methods, processes, and specifications; to use Sealy's secret methods for merchandising and selling, and to obtain the benefit of Sealy's advertising of its name, its trademarks, tradenames, copyrights, and slogans;

Now, Therefore, for and in consideration of the covenants and agreements from one party to the other party, as hereinafter set forth, and of their prompt and punctual performance by each party, and of other valuable consideration, the receipt of which is hereby acknowledged, It Is Agreed:

I

Definitions

I:1. The term "Sealy products" is defined as mattresses, including ensembles, studio couches, divans, studio lounge beds, sofa beds, and any other upholstered furniture convertible to or usable as a bed, chairs matching the last four (4) mentioned items, bed springs, box springs, foundation units, pillows, cushions, comforts, similar and related articles, and such other items which are patented or the tradenames thereof registered. This definition of "Sealy products" shall include such manufactured articles known as "Sealy" or "Crestline" products which have affixed thereto Sealy or Crestline trademarks, tradenames, or slogans defined in Paragraph I:2 of this Article. Except as specifically hereinafter provided in this contract, the term "Sealy products" shall include both the Sealy and Crestline manufactured products.

I:2. Sealy trademarks, tradenames, or slogans, whether or not registered, are defined as "Crestline", "Sealy Rest", "Sealy Tuftless", "Cotton Boll", "Truease", "Texlan", "Luxel", "Sunspun", "Durolife", "Posture Pillow", "Fast-Asleep", "Sleep Charm", "Natural Rest", "Air Vent", "Sleep Joy", "Sealy Kraft", "Airlite", "Enchanted Nights", "Airwoven", "Vital Third", "A Giant Pillow for the Body", "Sleeping on a Sealy is like Sleeping on a Cloud", "Prize Winner", and such other trademarks, tradenames, and slogans as Sealy may hereafter, from time to time, use and disclose to Licensee. Licensee may be permitted by the Board of Directors of Sealy, Incorporated, to use any other trademark, tradename, or slogan which does not infringe upon any trademark, tradename, or slogan used by Sealy, and if permission is granted by Sealy to use any such trademark, tradename, or slogan, such trademark, tradename, or slogan shall become the property of Sealy.

[fol. 1285E] I:3. "Territory" is defined as the area in which the Licensee shall have the right, subject to the covenants and conditions hereinafter set forth, to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and for such purpose only to use Sealy

patents, trademarks, tradenames, copyrights, slogans, methods, processes and specifications.

I:4. "Licensee" is defined as the person, firm, or corporation, to whom Sealy allocates a specified area in which such person, firm, or corporation only shall manufacture and sell Sealy products to retail stores, hospitals, and hotels, and for such purpose shall have the exclusive right to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, and use Sealy labels.

I:5. "Specifications" are defined as the type, quality, and quantity of materials which Sealy determines, from time to time, are to be used in the manufacture of "Sealy products".

I:6. "Methods and Processes" are defined as Sealy's methods and processes of manufacture and sale, whether or not patented, and which are furnished by Sealy to its Licensees for the manufacture and sale of Sealy products.

II

Licensee's Territory and Term of Contract and Renewal

II:1. Party of the second part is named the sole and exclusive Licensee under this agreement, and shall have the sole right to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and use Sealy labels affixed to such products in the territory described in Paragraph II:2 for the term of this License or any extension thereof.

II:2. The territory in which Licensee shall have the sole right to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications is as follows:

The entire State of Oklahoma.

The northern part of Texas beginning at a line drawn westerly from Dacha to Nacogdoches to Palestine, then to Mexia, then southwesterly to Marlin, south to Rockdale, then westerly to Lampasas, to Goldthwaite, to Richland Springs, to Mason, to Rock Springs, to Pandale, to Valentine, then in a straight line to the Mexico border. All of the State of Texas north of this line is included in this

territory. The towns mentioned above are not included in the territory.

II:3. The term of this contract shall be for five (5) years beginning the 1st day of July, 1950 and ending the 30th day of June, 1965, unless sooner terminated by the agreement of the parties or under the provisions of this License.

II:4. If Licensee shall well and truly perform during the full period of this contract each and every covenant of this Contract, time being of the essence, and if Licensee's selling and manufacturing facilities and efforts are not during the period of this Contract deemed inadequate by a two-thirds majority vote of Sealy's Board of Directors, then this License shall remain in full force and effect so long as Licensee shall well and truly perform each and every covenant of this agreement, Sealy reserving the right at the beginning of each five (5) year period after the expiration of the first renewal of this License to increase the minimum royalty to be paid by Licensee a maximum of twenty-five (25) percent of the amount of minimum royalty being paid by Licensee during the next preceding five (5) year period.

[fol. 1286E]

III

Sealy's Covenants and Agreements

Sealy covenants and agrees while this contract is in full force and effect:

III:1. To permit Licensee the use of Sealy patents, copyrights, trademarks, tradenames, slogans, exclusive rights, and licenses in the manner and form prescribed by Sealy in the manufacture and sale of Sealy products.

III:2. To furnish Licensee true and correct copies of specifications presently used in the manufacture of Sealy products. Such specifications may be changed at any time by Sealy, and when changed, written notice thereof together with the new specifications shall be furnished by Sealy to Licensee, and after thirty (30) days from the date of such notice shall become the specifications to which all Sealy products thereafter manufactured by Li-

censee must conform. The Board of Directors and/or President are authorized to grant Licensee sufficient time beyond the thirty (30) day period, hereinbefore provided, within which to dispose of inventories rendered obsolete by changes in specifications.

III:3. To furnish Licensee full information concerning its methods and processes of manufacture and sale. Such methods and processes may be changed, from time to time, by Sealy, and, when changed, written notice thereof, together with the new methods and processes shall be furnished by Sealy to Licensee, and after thirty (30) days from the date of such notice shall become the methods, and processes to which all Sealy products thereafter manufactured by Licensee must conform. If any of such processes or methods, furnished by Sealy to Licensee, should in any wise violate any of the laws, rules, or regulations of the United States Government or any of its Agencies, or the laws of the State in which Licensee manufactures or sells, then such processes or methods shall not be binding upon or enforceable against Licensee. The Board of Directors and/or President are authorized to grant Licensee sufficient time beyond the thirty (30) day period, hereinbefore provided, within which to dispose of inventories rendered obsolete by changes of process or methods of manufacture.

III:4. To defend at Sealy's expense and to indemnify Licensee in any and all suits against Licensee for patent or trademark infringement because of Licensee's use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the manufacture of Sealy products, provided:

- (a). That the said Sealy products are manufactured in accordance with Sealy specifications and process of manufacture herein defined; and,
- (b). That Sealy in no way be liable for indemnity or judgements unless the liability against the Licensee shall have been determined in a court of last resort after actual trial.
- (c). As conditions precedent for such protection Licensee shall give notice:

(1). By registered mail to Sealy at its office in Chicago, Illinois, promptly, of any claim of infringement against Licensee because of Licensee's use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the [fol. 1287E] manufacture of Sealy products, and in such notice shall advise Sealy all facts concerning such alleged claim for infringement; and,

(2). In the event any suit should be filed against Licensee based upon such alleged infringement, to forward to Sealy at its office in Chicago, Illinois, the complaint, petition, or copy thereof, in said cause within two (2) days after service of said complaint or petition upon Licensee.

III:5. Sealy shall in no event incur any liability to Licensee because of any claim, demand, or suit for infringement until such liability shall have been finally determined in a court of last resort after actual trial, and unless Sealy shall have been given the notice, as herein provided, of the filing of any claim, demand, or suit against Licensee for such alleged infringement.

III:6. Sealy will not manufacture nor sell, nor will it without the consent of Licensee contract with or permit any other person, partnership, association, or corporation, to manufacture or sell Sealy products within the territory allocated to Licensee so long as this contract is in force; and Sealy will prevent, insofar as it is legally permitted, the manufacture, sale or shipment of Sealy products in said territory by any other person, partnership, association, or corporation, except that Sealy, directly or through subsidiary, or by contract with another manufacturer shall have the right to manufacture and sell bed springs, sofa and divan springs, and springs of all types within the territory covered by this contract to Licensee, and if, for any reason, the Licensee in the territory does not desire to purchase such springs, or any part hereof, then to sell such springs to other persons, firms, or corporations in the territory covered by this contract, but not as Sealy products nor bearing Sealy labels.

III:7. Sealy will pay to Licensee as liquidated damages

Ten (\$10.00) and 00/100 Dollars for each Sealy product sold or shipped by Sealy into Licensee's exclusive territory; and Sealy will pay Ten (\$10.00) and 00/100 Dollars, less the cost of collection for each such article sold or shipped in Licensee's exclusive territory by any person, partnership, association, or corporation having in force a contract with Sealy identical with or similar to this contract; provided that Sealy has theretofore collected said Ten (\$10.00) and 00/100 Dollars for each such article from said person, partnership, association, or corporation manufacturing or selling such articles. But this provision shall not apply to the sale of Furniture Market Samples of Sealy, Incorporated, or to those products excepted in Paragraph III:6 hereof.

III:8. To permit Licensee, upon written request, to use the term "Sealy" in its corporate or business name, but only in connection with the manufacture and sale of Sealy products and not for the manufacture and sale of any other products.

III:9. To use and expend at least fifty (50) percent of the amount paid it as royalties under Paragraph V:1 of this contract and other similar contracts which Sealy has with its Licensees for national and other advertising, merchandising, and general sales promotion of Sealy products throughout the United States, it being understood that the amount expended by Sealy for (a) salary, office, and administrative costs, and (b) for payments to Licensees for Sealy's share of local advertisement in Licensee's territory, are considered a part of such advertising, merchandising, and sales promotion expense. The type of advertising, merchandising, and sales promotion, and the amount expended for each of such items and when such expenditure shall be made, shall be determined by Sealy's Board of Directors.

IV

Licensee's Covenants and Agreements

Licensee covenants and agrees:

[fol. 1288E] IV:1. To manufacture, during the term of this agreement or any renewal thereof, at Licensee's own expense, Sealy products, in the designated territory strict-

ly in accordance with Sealy specifications, patents, processes, exclusive rights, and licenses now owned or controlled, or hereafter acquired by Sealy, and not to use or utilize any of such specifications, patents, processes, exclusive rights, and licenses in the manufacture of any other product; and to comply with changes made by Sealy in the specifications of all Sealy products or in the methods or process of their manufacture within the time or extension thereof, as provided in Paragraph III:2 and III:3 hereof; and to sell Sealy products to retail stores and others subject to the provisions of this License.

IV:2. To use exclusively in the manufacture of Sealy products and for no other purpose, all items and/or supplies determined by Sealy to be exclusive for Sealy products, whether supplied by or procured through Sealy or purchased by the Licensee from any other source.

IV:3. To maintain in the designated territory such facilities for the manufacture of all Sealy mattresses and box springs (exclusive of Crestline mattresses) as shall be deemed adequate by a two-thirds majority vote of Sealy's Board of Directors; and to maintain such selling force for the sale of Sealy products as are manufactured by Licensee in constant and continuous effort in the designated territory as Sealy by a two-thirds majority vote of its Board of Directors shall deem adequate. Failure of Licensee to maintain such adequate manufacturing facilities and selling force shall be a violation of this License, and Sealy by a two-thirds majority vote of its Board of Directors shall have the right forthwith to terminate same by written notice addressed to Licensee at its last known place of business.

IV:4. That Licensee shall not:

(a). Manufacture, sell, or deliver within Licensee's exclusive territory any products competitive to Sealy which bears labels, trademarks, tradenames, or slogans of any nationally advertised competitor of Sealy.

(b). Sell or deliver any Sealy products outside of Licensee's exclusive territory, nor sell nor deliver Sealy products if Licensee knows or has reason to believe that the purchaser intends to resell or deliver the same for resale out of Licensee's exclusive territory; and,

(c). Sell or deliver any Sealy products to wholesalers, distributors, or mail order houses without first having obtained from Sealy permission to make such sale.

IV:5. To advertise Sealy products by means embodying and employing Sealy trademarks, tradenames, copyrights, slogans, or designs; and, upon request, either oral or in writing, by Sealy, to forthwith discontinue any advertising or form of advertisement in any newspaper, publication, or otherwise, which is objectionable to Sealy; not to advertise nor represent that any of Licensee's products other than Sealy products are manufactured or sold by the makers of Sealy products unless so authorized by the President of Sealy or its Board of Directors; and if so authorized to discontinue said form of advertising immediately upon request of Sealy or its President, not to advertise nor represent a product as a Sealy product unless it is a Sealy product manufactured in accordance with the provisions of this contract; not to use the Sealy name in connection with Licensee's advertisement or sales other than in the advertisement and sale of Sealy products; to use letterheads, billheads, invoices, envelopes, business cards bearing the name "Sealy" in the transaction of business involving Sealy products; not to use Licensee's own name or corporate name (other than "Sealy") or any private brand, label, or slogan, letterheads, billheads, or invoices in connection with the advertisement or sale of Sealy products; and except in the sale of Sealy products within the territory covered by this License, Licensee will in no manner trade on the prestige of Sealy nor make use of the fact that Licensee is a manufacturer of Sealy merchandise and a Sealy Licensee; it being expressly agreed that Licensee shall not use or trade upon the Sealy name, prestige, nor the fact that the [fol. 1289E] party of the second part is a Sealy Licensee except in the territory covered by this contract and in connection with the sale of Sealy products; and it being expressly understood and agreed that a violation of this provision shall be a breach of this contract, and shall give Sealy the right to terminate this contract and license.

IV:6. To permit Sealy to exercise supervision and

control over the manufacture, advertising, and sale by Licensee of Sealy products, so as to insure Licensee's conforming to Sealy's specifications, processes, and methods of manufacture and sale of Sealy products and uniformity in said products; and in order to better enable Sealy to exercise such supervision and control, Licensee agrees to furnish Sealy specimens of manufactured products, samples of material used in manufacturing, and to afford representatives of Sealy, including Sealy's engineer, access at reasonable hours to its plant, warehouse and records appertaining to the manufacture and sale of Sealy products. Sealy's engineer shall visit Licensee's plant at least once each year for a period not exceeding six (6) days, the expense for the engineer's service, including his compensation, to be paid for by Licensee. If Licensee requests an additional visit or visits by Sealy's engineer during any yearly period of this License (beginning January 1st of each year), the expense of such engineer, as hereinafter provided, shall be paid by Licensee; otherwise, no charge shall be made upon Licensee for such additional visit or visits by Sealy's engineer.

IV:7. To keep detailed, accurate, and complete records of all Sealy products and all other products of like kind manufactured by Licensee during each month in Licensee's exclusive territory; and to afford to Sealy and its representatives access, at reasonable hours, to all of its records for the purpose of inspection, copy, or audit of said records; and to send to Sealy on or before the 15th day of each month a true and complete report showing the quantity of all products subject to royalty payments manufactured and sold by Licensee during the preceding month.

IV:8. To affix to all Sealy products sold and manufactured, and/or sold and/or shipped in Licensee's territory, the form of label as prescribed by Sealy; to place on Sealy products in the form and at the position thereon, as prescribed by Sealy, such other or supplementary labels as Sealy may, from time to time, determine; and not to affix or attach a label containing the name "Sealy" in any form, nor Sealy's label to a product other than one manufactured by Licensee in accordance with this contract.

IV:9. To purchase from Sealy and to pay Sealy therefor the labels designated by Sealy to be affixed to Sealy products.

IV:10. If, during the term of this contract, Licensee has obtained Sealy's consent to use the term "Sealy" in its corporate or business name, Licensee will, upon the expiration of this contract, either according to its terms or sooner terminated under its provisions, immediately eliminate from its corporate or business name the term "Sealy", and upon Licensee's failure to do so, Sealy shall have the right to obtain specific relief by injunction in accordance with this provision, but such right shall be cumulative and not exclusive of any other right which Sealy may have for Licensee's breach of this provision of the contract.

IV:11. That Sealy's patents, copyrights, trademarks, tradenames, slogans, and processes are valid and owned by Sealy, and that Licensee will not itself commit, aid, abet, nor assist, any other person, partnership, association, or corporation in committing any act which might in any wise infringe on any of said patents, copyrights, trademarks, tradenames, slogans, or processes.

IV:12. To make no disclosure, except to its own employees using the same, of any and all manufacturing processes and formulae, or machinery used for the manufacture of Sealy products and Sealy's methods of sale; and to make no disclosure of such manufacturing processes and formulae or the machinery used for the manufacture of Sealy products and Sealy's methods of sale after the termination of this License.

[fol. 1290E] IV:13. Licensee will not, during the term of this License, do any act or pursue any course of action either in manufacturing, selling, merchandising, or advertising Sealy products, or in the manufacture, sale, merchandising or advertising of any other products manufactured by Licensee, which will be detrimental or injurious to Sealy, or which will, in any way, damage, injure, deteriorate, or otherwise harmfully affect the value of any of Sealy's trademarks, tradenames, slogans, patents, processes, or which will adversely affect Sealy, its trademarks, tradenames, slogans, patents, or processes, or the products

of Sealy manufactured under such processes, or merchandised, advertised or sold under any of Sealy's trademarks, tradenames, slogans, patents, or processes. The determination of whether any such act or series of acts shall have such harmful, injurious, deleterious, or adverse effect, shall rest in the sole determination of the Board of Directors of Sealy, and upon such Board's finding by two-thirds majority vote that Licensee has been guilty of any such act or acts, the Board may forthwith terminate the License, but said Board shall have the sole discretion to determine that the Licensee may continue upon its being satisfied that it would be to the interest of Sealy to permit such License to continue upon proof satisfactory to the Board that the act or acts complained of have been discontinued and that harmful effects have either been eradicated or were of such nature as to have no permanent ill effects upon Sealy, its products, trademarks, tradenames, slogans, patents, or processes.

IV:14. To comply with such reasonable rules and regulations not inconsistent with the terms of this License which Sealy may, from time to time, establish for the manufacture and sale of Sealy products and the operation of Licensee's business as a Sealy Licensee.

IV:15. To perform in good faith each and every covenant of this agreement.

V

Royalty and Charges to be Paid by Licensee under this Contract

V:1. As a consideration for its exclusive right to manufacture and sell Sealy products and to use Sealy patents, trademarks, tradenames, copyrights, slogan, methods, processes, and specifications, Licensee shall pay to Sealy the following royalty:

(a). During the term of this contract in monthly installments on the 15th day of each succeeding month three (3) percent of all of Licensee's gross sales made during the preceding month up to One Million (\$1,000,000.00) and 00/100 Dollars; and when the aggregate of the monthly sales in any one calendar year beginning January 1, 1950

have equalled One Million (\$1,000,000.00) and 00/100 Dollars, then two (2) percent of such gross sales from One Million (\$1,000,000.00) and 00/100 Dollars to Two Million (\$2,000,000.00) and 00/100 Dollars, then one (1) percent of such sales from Two Million (\$2,000,000.00) and 00/100 Dollars to Three Million (\$3,000,000.00) and 00/100 Dollars; and when the aggregate of such monthly sales in any one calendar year beginning January 1, 1950 have reached Three Million (\$3,000,000.00) and 00/100 Dollars, then two (2) percent on all sales above Three Million (\$3,000,000.00) and 00/100 Dollars; such percentage shall be of the gross sales within the licensed territory during each calendar year beginning January 1, 1950 and such royalty shall be paid upon sales of Sealy products or other like products, except sales of Licensee's manufactured products other than Sealy products to bona fide jobbers and mail order houses approved by Sealy or to a United States Governmental Agency or the Agency of any State or political subdivision thereof, it being stipulated that such monthly royalty or percentage on gross sales shall be not less than the sum of Four Hundred (\$400.00) and no/100 Dollars per month.

[fol. 1291E] It is further stipulated:

(a). That Licensee's gross sales do not include sales of any class of manufactured products herein defined as "New Sealy Products" for which Sealy has not issued specifications and processes at the time this License Agreement dated the 1st day of July, 1950, is made, and if thereafter and during the term of this License Agreement Sealy should issue specifications and processes for the manufacture of any new class of manufactured products (herein defined as "New Sealy Products") which Licensee then manufactures, Licensee shall pay royalty on its gross sales of such New Sealy Products and any like products manufactured by Licensee only in the event Licensee uses the Sealy specifications and/or processes and/or methods of merchandising or selling such new class of Sealy manufactured products herein defined as "New Sealy Products".

(b). The term "New Sealy Products" shall mean products other than the following: mattresses including en-

sembles, studio couches, divans, studio lounge beds, sofa beds, and any other upholstered furniture convertible to or usable as a bed, chairs matching the last four (4) mentioned items; bed springs, box springs, foundation units, pillows, cushions, comforts, similar and related articles, and such other items which are patented or the trade-names thereof registered.

(c). "Gross Sales" do not include P.M.'s, returns, allowances, and freight allowed customers.

(d). The term "bonafide jobbers and mail order houses" does not include any retail store outlet operated directly or indirectly by the jobber or mail order house, and any sale of Licensee's manufactured product to a retail store outlet operated directly or indirectly by a bona fide jobber or by a mail order house shall be included in Licensee's gross sales upon which the royalty, as hereinbefore provided, is to be paid by Licensee.

V:2. Licensee agrees to pay for all advertising material and other displays furnished by Sealy, or by sources designated by Sealy, upon the order of Licensee within thirty (30) days from the date when furnished. It is, however, understood and agreed that Sealy, without order of the Licensee, may ship advertising materials and displays which Sealy deems necessary for the promotion and welfare of its business to Licensee not exceeding the sum of Four Hundred Fifty (\$450.00) and 00/100 Dollars per annum, and such items so shipped shall be paid for by Licensee within thirty (30) days from the date of shipment.

V:3. Licensee agrees to pay for all material, ticking, cotton, and supplies furnished Licensee by Sealy or Sealy's sources of supply at prices and upon terms agreed upon between Sealy and Licensee.

V:4. Licensee agrees to pay to Sealy on demand the sum of Ten (\$10.00) and 00/100 Dollars: (a) for each Sealy product manufactured, sold, or delivered by Licensee outside of Licensee's exclusive territory; (b) for each Sealy product sold if Licensee knows or should have known that the purchaser intends to resell or deliver the same for resale outside of Licensee's exclusive territory;

and (c) for each Sealy product sold or delivered to any mail order house or jobber without Sealy's written consent. Licensee further agrees to pay to Sealy on demand the full retail price of any Sealy product manufactured or sold by Licensee to any purchaser, on the production of evidence satisfactory to Sealy that such product was not made in accordance with the Sealy specifications, or if such product was mislabeled or misbranded, or inferior materials or workmanship was used in its manufacture; and this agreement shall be of full force and effect after the termination of this contract.

V:5. Licensee agrees to pay to Sealy charges for the services rendered Licensee by Sealy's engineer at a per diem rate fixed by the Board of Directors for such service, which shall include the traveling and hotel expenses of the engineer.

[fol. 1292E] Covenants of Both Parties

Both parties hereto covenant and agree:

VI:1. That within ninety (90) days from any termination of this contract, Sealy shall have the right to repurchase at Licensee's original cost the whole or any part of Sealy labels purchased by Licensee, the whole or any part of the manufactured or partially manufactured Sealy products, raw materials, or supplies, purchased by Licensee for the manufacture of Sealy products.

VI:2. In the event Licensee becomes insolvent, or a petition is filed by or against Licensee under the provisions of the Federal Bankruptcy Act (which shall include proceedings for reorganization, adjustments with creditors, or any other form of relief under the Bankruptcy Act of the United States), or if Licensee suffers or permits a Receiver to be appointed in any insolvency proceedings in a State or Federal Court, or makes an assignment of the whole or any portion of its assets for the benefit of its creditors, or in the event Licensee suspends or discontinues its business operations for a period of three (3) months, then upon the happening of either one of said events this contract shall terminate and be at an end.

VI:3(a). Except as otherwise herein provided, if Licensee defaults in the performance or violates any provision of this Contract, Sealy must give thirty (30) days' written notice of its intention to terminate this contract by reason of such violation or default, and if such default or violation is remedied during such thirty (30) day period, then this contract shall again be of full force and effect, and if not so remedied to the satisfaction of a two-thirds majority vote of Sealy's Board of Directors, then this contract shall be at an end at the expiration of such thirty (30) day period. Licensee shall be given an opportunity to be heard with respect to such default or violation prior to action being taken thereon by Sealy's Board of Directors.

VI:3(b). Should Licensee fail or refuse within the time and in the manner provided in Paragraph VI:3(a) to remedy any such default or violation and thus cause Sealy to declare this contract to be at an end, then Licensee agrees to pay Licensor as liquidated damages for such breach a sum equal to the amount of royalty paid by Licensee during the twelve (12) months next preceding the date of the termination of this contract.

VI:3(c). Should Licensor default in the performance or violate any provision of this contract, Licensee must give thirty (30) days' written notice of its intention to terminate this contract by reason of such violation or default, and if such default or violation is remedied during such thirty (30) day period, then this contract shall again be of full force and effect, and if not so remedied, then this contract shall be at an end at the expiration of such thirty (30) day period.

VI:4(a). Licensee may voluntarily terminate this contract after giving Sealy two (2) months' notice of its intention so to terminate, and the contract shall be at an end at the expiration of the two (2) months' period, and contemporaneously with the giving of such notice of termination, Licensee will pay to Sealy as consideration for its release from this contract a sum equal to twelve (12) months' minimum royalty.

VI:4(b). In the event Licensee voluntarily or involuntarily suspends or discontinues its business operations for

a period of three (3) months, Sealy shall have the right to recover as liquidated damages for such breach a sum equal to the amount of royalty paid by Licensee during the twelve (12) months next preceding the date when Licensee began the suspension or discontinuance of its business, or a sum equal to twelve (12) months' minimum royalty, as provided in this contract, whichever is greater. [fol. 1293E] VI:5(a) After the termination of this contract for any reason, Licensee agrees that it will not in the manufacture, sale, or advertising of any of its products use the name "Sealy" or any Sealy patents, secret methods, specifications, or processes which Licensee has at any time used in the manufacture, sale, and advertising of Sealy products.

(b) If, after having received notice from Sealy of the termination of this License for any reason, Licensee shall continue to use the name "Sealy", or shall use any Sealy patents, secret methods, specifications, or processes in the manufacture, sale, or advertising of its products, or represent that it is a Licensee of Sealy shall in addition to any other remedy provided by law or in equity be entitled to recover from the Licensee as liquidated damages a sum equal to three (3) times the amount of minimum monthly royalty called for in V:1(a) of this contract for each month or part thereof in which Licensee shall use the name "Sealy" or shall use any Sealy patents, secret methods, specifications, or processes in the manufacture, sale, or advertising of its products, or represent that it is a Licensee of Sealy.

VI:6 Failure of Sealy to notify Licensee of any breach or violation of this contract shall not constitute a waiver of any such breach or violation or of Sealy's right to terminate this contract at a later date because of such breach or violation.

VI:7 This contract is a personal contract between the parties hereto, and may not be assigned or any rights thereunder transferred in any manner by Licensee without Sealy's written consent; and such consent must be procured in the event Licensee is a corporation, and there is any change in the ownership of stock therein whereby the voting control of the corporation is vested in persons

other than those holding such voting control therein as of the date of this contract, except there shall be deemed no change in the voting control of the corporation Licensee in the event such voting control is exercised by the Executors or Administrators of a deceased stockholder or stockholders, or by a Trustee or Trustees under a testamentary or inter vivos trust executed by a stockholder or stockholders for the benefit of relatives within the second degree.

VI:8 That Licensee has no authority to bind Sealy upon any contract or obligation whatsoever. Nothing in this contract shall be construed as constituting Licensee as agent for Sealy for any purpose other than the appointment of Licensee to use and utilize the patents, trademarks, tradenames, slogans, processes, and specifications as provided in this license.

VI:9 Sealy shall not be liable to any person, firm, or corporation for any acts or omissions of Licensee or for unsatisfactory merchandise, made or sold by Licensee, or for any misrepresentations made by Licensee.

VII

All notices provided for to be given under this contract shall be in writing.

VIII

This contract shall be separable, and if any portion hereof shall be held invalid for any reason, the remainder shall not thereby be invalidated but shall remain in full force and effect.

[fol. 1294E]

IX

Except where Sealy's Board of Directors is specifically required to act under any provision of this contract, the term "Sealy's Board of Directors" shall be deemed to include the whole Board of Directors or the Executive Committee thereof.

X

This contract shall be governed by the laws of the State of Illinois, and shall not become binding upon or effective until a copy thereof, executed by Licensee, shall be received by Sealy at its office in Chicago, Illinois.

In Witness Whereof, the parties hereto, each acting through its duly authorized officers, have hereunto set their hands and affixed their seals, on this, the day and year first above written.

Sealy, Incorporated, (Seal), by: E. H. Bergmann,
President.

Attest:

W. J. Haig, Asst. Secretary.

U. S. Bedding Co., (Seal), by: Louis G. Haas, Pres-
ident.

Attest:

Aaron T. Hod, Secretary.

[fol. 1295E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1064

This Agreement, made and entered into this, the 1st day of October, 1952, by and between Sealy, Incorporated, a Delaware Corporation, hereinafter called "Sealy", party of the first part, and David Manufacturing Company, a corporation of the State of Missouri, with principle office at Kansas City, Missouri, hereinafter called "Licensee", party of the second part;

Witnesseth:

Whereas, Sealy is the owner of patents, trademarks, tradenames, copyrights, slogans, secret methods, processes, and specifications, for use in the design, manufacture and sale of mattresses, studio couches, sofa beds, bed springs, bedding, dual sleeping equipment, and similar products, and from time to time originates and develops additional patents, secret methods, processes, and specifications (which may or may not be copyrighted) for the design and manufacture of the above named products, and also originates additional trademarks, tradenames, copyrights, slogans, and methods for the sale of such products, and has extensively advertised the name "Sealy and its trademarks, tradenames, and slogans; and,

Whereas, Licensee desires to manufacture and sell to retail stores Sealy products within an exclusive territory under the terms and conditions hereinafter set forth, and to use Sealy's patents, trademarks, tradenames, copyrights, slogans, secret manufacturing methods, processes, and specifications; to use Sealy's methods for merchandising and selling, and to obtain the benefit of Sealy's advertising of its name, its trademarks, tradenames, copyrights, and slogans;

Now, Therefore, for and in consideration of the covenants and agreements from one party to the other party, as hereinafter set forth, and of their prompt and punctual performance by each party, and of other valuable con-

sideration, the receipt of which is hereby acknowledged,
It is Agreed:

I

Definitions

I:1. The term "Sealy products" is defined to include mattresses, including ensembles, studio couches, divans, [fol. 1296E] studio lounge beds, sofa beds, and any other upholstered furniture convertible to or usable as a bed, chairs matching the last four (4) mentioned items, bed springs, box springs, foundation units, pillows, cushions, comforts, similar and related articles, and any other items as may, from time to time, be developed, designed, manufactured, or the specifications for the manufacture of which may be issued by Sealy, or which may be authorized by Sealy for manufacture and sale by its licensees. Under Sealy's supervision, and shall also include any and all items sold under any trademark, tradename, or slogan of Sealy or "Crestline". Except as specifically hereinafter provided in this contract, the term "Sealy products" shall include both the Sealy and Crestline manufactured products.

I:2. Sealy trademarks, tradenames, or slogans, whether or not registered, are defined as "Crestline", "Sealy Rest", "Sealy Tuftless", "Cotton Boll", "Truease", "Texlan", "Luxel", "Sunspun", "Durolife", "Posture Pillow", "Fast-Asleep", "Sleep Charm", "Natural Rest", "Air Vent", "Sleep Joy", "Sealy Kraft", "Airlite", "Enchanted Nights", "Airwoven", "Vital Third", "A Giant Pillow for the Body", "Sleeping on a Sealy is-like Sleeping on a Cloud", "Prize Winner", "Good Homekeeper", "Miracle Mesh", "Golden Sleep", "Posturepedic", "Firm-O-Rest", "Sleep Lounge", and such other trademarks, tradenames, and slogans as Sealy may hereafter, from time to time, use and disclose to Licensee. Licensee may be permitted by the Board of Directors of Sealy, Incorporated, to use any other trademark, tradename, or slogan which does not infringe upon any trademark, tradename, or slogan used by Sealy, and if permission is granted by Sealy to use such trademark, tradename, or slogan, such trade-

mark, tradename, or slogan shall become the property of Sealy.

I:3. "Territory" is defined as the area, more fully described in II:2 below, in which the Licensee shall have the right, subject to the covenants and conditions hereinafter set forth, to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and for such purpose only, to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications.

I:4. "Licensee" is defined as the person, firm, or corporation to whom Sealy allocates a specified area in which such person, firm, or corporation only shall manufacture and sell Sealy products to retail stores, hospitals, and hotels, and for such purpose shall have the exclusive right to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, and use Sealy labels.

I:5. "Specifications" are defined to mean the written instructions or directions issued from time to time by Sealy specifying the type, quality, and quantity of materials to be used, and the methods and processes to be followed in the manufacture and fabrication of Sealy products.

II

Licensee's Territory and Term of Contract and Renewal

II:1. Party of the second part is named the sole and exclusive Licensee under this agreement, and shall have the sole right to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and use Sealy labels affixed to such products in the territory described in Paragraph II:2 below for the term of this license or any extension thereof.

II:2. The territory in which Licensee shall have the sole right to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, is as follows:

Kansas—Entire state

Missouri—Following counties:

Andrew	DeKalb	Moniteau
Atchison	Douglas	Morgan
Barry	Gentry	Newton
Barton	Greene	Nodaway
Bates	Grundy	Ozark
Benton	Harrison	Pettis
Buchanan	Henry	Platte
Caldwell	Hickory	Polk
Camden	Holt	Putnam
Carroll	Howard	Ray
Cass	Jackson	St. Clair
Cedar	Jasper	Saline
Chariton	Johnson	Stone
Christian	LaClede	Sullivan
Clay	Lafayette	Taney
Clinton	Lawrence	Vernon
Cooper	Linn	Webster
Dade	Livingston	Worth
Dallas	McDonald	Wright
Daviess	Mercer	

[fol. 1298E] II:3. The term of this contract shall be for 3 years and 3 months beginning the 1st day of October, 1952, and ending the 31st day of December, 1955, unless sooner terminated by the agreement of the parties or under the provisions of this License.

II:4. If Licensee shall well and truly perform each and every covenant of this contract during the full time thereof, including, without intending to limit the generality of the foregoing, specific compliance with the provisions of Sec. IV:3 below, and time being of the essence, then Licensee shall be entitled to one renewal of this license agreement for a period of five (5) years from the date of the expiration hereof, provided that Sealy shall have the right to increase the minimum royalty to be paid by Licensee during such renewal period, to a maximum of twenty-five (25) percent of the minimum royalty provided in Paragraph V:1(b) below. Notice of the exercise of this right of renewal shall be given in writing by the Licensee to Sealy at least six (6) months prior to the expiration date of this contract.

II:5. If the Licensee shall well and truly perform during the full period of this contract and/or the any renewal thereof, each and every covenant of this contract and of the renewal contract, including specifically, but without intending to limit the generalities of the foregoing, specific compliance with the provisions of Paragraph IV:3 below, and time being of the essence, then the renewal of this license shall remain in full force and effect so long as the Licensee shall continue to well and truly perform each and every covenant of this Agreement and of the renewal thereof; provided that Sealy shall have the right at the beginning of each five (5) year period after the expiration of the first renewal of this license, to increase the minimum royalty to be paid by the Licensee thereafter, a maximum of twenty-five (25) percent of the amount of minimum royalty being paid by the Licensee during the next preceding five (5) year period.

III

Sealy's Covenants and Agreements

Sealy covenants and agrees while this contract is in full force and effect:

[fol. 1299E] III:1. To permit Licensee, in the manufacture and sale of Sealy products, the use of Sealy patents, copyrights, trademarks, tradenames, slogans, exclusive rights, and licenses in the manner and form prescribed by Sealy.

III:2. To furnish Licensee true and correct copies of specifications currently used in the manufacture of Sealy products. Such specifications may be changed at any time by Sealy, and, when changed, written notice thereof together with the new specifications shall be furnished by Sealy to Licensee, and after thirty (30) days from the date of such notice shall become the specifications to which all Sealy products thereafter manufactured by Licensee must conform. The Board of Directors and/or President are authorized to grant Licensee sufficient time beyond the thirty (30) day period, hereinbefore provided, within which to dispose of inventories rendered obsolete by changes in specifications.

III:3. To furnish Licensee full information concerning its methods and processes of manufacture and sale. Such methods and processes may be changed, from time to time, by Sealy, and, when changed, written notice thereof, together with the new methods and processes shall be furnished by Sealy to Licensee, and after thirty (30) days from the date of such notice shall become the methods and processes to which all Sealy products thereafter manufactured by Licensee must conform. If any of such processes or methods, furnished by Sealy to Licensee, should in any wise violate any of the laws, rules, or regulations of the United States Government or any of its Agencies, or the laws of the State in which Licensee manufactures or sells, then such processes or methods shall not be binding upon or enforceable against Licensee. The Board of Directors and/or President are authorized to grant Licensee sufficient time beyond the thirty (30) day period, hereinbefore provided, within which to dispose of inventories rendered obsolete by changes of process or methods of manufacture.

III:4. To defend at Sealy's expense any and all suits against Licensee for patent or trademark infringement because of Licensee's use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the manufacture of Sealy products, provided:

[fol. 1300E] (a) That the said Sealy products were manufactured at the time of the alleged infringement in accordance with Sealy specifications.

(b) As conditions precedent for such protection Licensee shall give notice:

(1) By registered mail to Sealy at its office in Chicago, Illinois, promptly, of any claim of infringement against Licensee because of Licensee's use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the manufacture of Sealy products, and in such notice shall advise Sealy all facts concerning such alleged claim for infringement; and,

(2) In the event any suit should be filed against Licensee based upon such alleged infringement, to forward to Sealy at its office in Chicago, Illinois the complaint, petition, or copy thereof, in said cause within two (2)

days after service of said complaint or petition upon Licensee.

III:5. Sealy shall in no event incur any liability because of any claim, demand, or suit for infringement until such liability shall have been finally determined in a court of last resort after actual trial, and unless Sealy shall have been given the notice, as herein provided, of the filing of any claim, demand, or suit against Licensee for such alleged infringement.

III:6. Sealy will not manufacture nor sell, nor will it without the consent of Licensee contract with or permit any other person, partnership, association, or corporation, to manufacture or sell Sealy products within the territory allocated to Licensee so long as this contract is in force; and Sealy will prevent, insofar as it is legally permitted, the manufacture, sale or shipment of Sealy products in said territory by any other person, partnership, association, or corporation, except that Sealy, directly or through subsidiary, or by contract with another manufacturer shall have the right to manufacture and sell bed springs, sofa and divan springs, and springs of all types within the territory covered by this contract to Licensee, and if, for any reason, the Licensee in the [fol. 1301E] territory does not desire to purchase all of such springs offered by Sealy in such territory, then to sell such springs to other persons, firms, or corporations in the territory covered by this contract, but not as Sealy products nor bearing Sealy labels.

III:7. Sealy will pay to Licensee as liquidated damages Ten (\$10.00) and No/100 Dollars for each Sealy product sold or shipped by Sealy into Licensee's exclusive territory; and Sealy will pay Ten (\$10.00) and No/100 Dollars, less the cost of collection for each such article sold or shipped in Licensee's exclusive territory by any person, partnership, association, or corporation having in force a contract with Sealy identical with or similar to this contract; provided that Sealy has therefore collected said Ten (\$10.00) and No/100 Dollars for each such article from said person, partnership, association, or corporation manufacturing or selling such articles. But this provision shall not apply to the sale of Furniture Market

Samples of Sealy, Incorporated, or to those products excepted in Paragraph III:6 hereof.

III:8. To permit Licensee, upon written request, to use the term "Sealy" in its corporate or business name, but only in connection with the manufacture and sale of Sealy products and not for the manufacture and sale of any other products.

III:9. To use and expend at least fifty (50) percent of the amount paid it as royalties under Paragraph V:1 and V:3 of this contract and other similar contracts which Sealy has with its Licensees, for national and other advertising, merchandising, and general sales promotion of Sealy products throughout the United States, it being understood that the amount expended by Sealy for (a) salaries, office, and administrative costs, and (b) for payments to Licensees for Sealy's share of local advertisement in Licensee's territory, are considered a part of such advertising, merchandising, and sales promotion expense. The type of advertising, merchandising and sales promotion, and the amount expended for each of such items and when such expenditure shall be made, shall be determined by Sealy Board of Directors.

IV

Licensee's Covenants and Agreements.

Licensee covenants and agrees:

[fol. 1302E]. IV:1. To manufacture, during the term of this Agreement or any renewal thereof, at Licensee's own expense, Sealy products, in the designated territory, strictly in accordance with Sealy specifications, patents, processes, exclusive rights, and licenses now owned or controlled, or hereafter acquired by Sealy, and not to use or utilize any of such specifications, patents, processes, exclusive rights, and licenses in the manufacture of any other products; and to comply with changes made by Sealy in the specifications of all Sealy products or in the methods or process of their manufacture within the time or extension thereof, as provided in Paragraphs III:2 and III:3 hereof; and to sell Sealy products to retail stores and other subject to the provisions of this License.

IV:2. To use exclusively, in the manufacture of Sealy products and for no other purpose, all items and/or supplies determined by Sealy to be exclusive for Sealy products, whether supplied by or procured through Sealy or purchased by the Licensee from any other source.

IV:3. To maintain in the designated territory such facilities for the manufacture of all Sealy mattresses and box springs (exclusive of Crestline mattresses) as shall be deemed adequate by a two-thirds majority vote of Sealy's Board of Directors; and to maintain such selling force for the sale of Sealy products as are manufactured by Licensee, in constant and continuous effort in the designated territory, as Sealy by a two-thirds majority vote of its Board of Directors shall deem adequate. Failure of Licensee to maintain such adequate manufacturing facilities and selling force shall be a violation of this License, and Sealy by a two-thirds majority vote of its Board of Directors shall have the right forthwith to terminate same by written notice addressed to Licensee at its last known place of business.

IV:4. That Licensee shall not:

(a) Manufacture, sell, or deliver within Licensee's exclusive territory any products competitive to Sealy which bear labels, trademarks, tradenames, or slogans of any nationally advertised competitor of Sealy.

(b) Sell or deliver any Sealy products outside of Licensee's exclusive territory, nor sell nor deliver Sealy products if Licensee knows or has reason to believe that [fol. 1303E] the purchaser intends to resell or deliver the same for resale out of Licensee's exclusive territory; nor

(c) Sell or deliver any Sealy products to wholesalers, distributors, or mail order houses without first having obtained from Sealy permission to make such sale.

IV:5. To advertise Sealy products by means embodying and employing Sealy trademarks, tradenames, copyrights, slogans, or designs; and, upon request, either oral or in writing, by Sealy, to forthwith discontinue any advertising objectionable to Sealy; not to advertise nor represent that any of Licensee's products other than Sealy products are manufactured or sold by the makers of

Sealy products unless so authorized by the President of Sealy or its Board of Directors; and if so authorized, to discontinue said form of advertising immediately upon request of Sealy or its President; not to advertise, nor represent a product as a Sealy product unless it is a Sealy product manufactured in accordance with the provisions of this contract and the specifications (pertaining to such product) issued by Sealy; not to use the Sealy name in connection with Licensee's advertisement or sales other than in the advertisement and sale of Sealy products; to use letterheads, billheads, invoices, envelopes, business cards, bearing the name "Sealy" in the transaction of business involving Sealy products; not to use Licensee's own name or corporate name (other than "Sealy") or any private brand, label or slogan, letterheads, billheads, or invoices in connection with the advertisement or sale of Sealy products; in no manner to trade on the prestige of Sealy nor to make use of the fact that Licensee is a manufacturer of Sealy merchandise and a Sealy Licensee, except in the sale of Sealy products; it being expressly agreed that Licensee shall not use or trade upon the Sealy name, prestige, nor the fact that the party of the second part is a Sealy Licensee except in the territory covered by this contract and in connection with the sale of Sealy products.

IV:6. To permit Sealy to exercise supervision and control over the manufacture, advertising, and sale by Licensee of Sealy products, so as to insure Licensee's conforming to Sealy's specifications, processes, and methods of manufacture and sale of Sealy products, and [fol. 130A] uniformity in said products; and in order to better enable Sealy to exercise such supervision and control, Licensee agrees to furnish Sealy specimens of Manufactured products and samples of material used in manufacturing, and to afford representatives of Sealy, including Sealy's engineer, access at reasonable hours to its plant, warehouse and records appertaining to the manufacture and sale of Sealy products. Sealy's engineer shall visit Licensee's plant at least once each year for a period not exceeding six (6) days, the expense for the engineer's service, including his compensation, to be paid for by Licensee. If Licensee requests an addi-

tional visit or visits by Sealy's engineer during any yearly period of this License (beginning January 1st of each year), the expense of such engineer, as hereinafter provided, shall be paid by Licensee; otherwise, no charge shall be made upon Licensee for such additional visit or visits by Sealy's engineer.

IV:7. To keep detailed, accurate, and complete records of all Sealy products and all other products of like kind manufactured by Licensee during each month in Licensee's exclusive territory; and to afford to Sealy and its representatives access, at reasonable hours, to all of its records for the purpose of inspection, copy, or audit of said records; and to send to Sealy on or before the 15th day of each month a true and complete report showing the quantity of all products subject to royalty payments manufactured and sold by Licensee during the preceding month.

IV:8. To affix to all Sealy products sold and manufactured and/or sold, and/or shipped, in Licensee's territory, the form of label and/or trademark, or tradename, or slogan, as prescribed by Sealy; to place on Sealy products in the form and at the position thereon, as prescribed by Sealy, such other or supplementary labels, trademarks, tradenames, or slogans as Sealy may, from time to time, determine; and not to affix or attach a label containing the name "Sealy" in any form, nor any of Sealy's trademarks, tradenames, slogans or labels to a product other than one manufactured by Licensee in accordance with this contract and the specifications of Sealy issued hereunder.

IV:9. To purchase from Sealy and to pay Sealy there-[fol. 1305E] for the labels designated by Sealy to be affixed to Sealy products.

IV:10. If, during the term of this contract, Licensee has obtained Sealy's consent to use the term "Sealy" in its corporate or business name, Licensee will, upon the termination of this contract or any reason whatsoever, immediately eliminate from its corporate or business name the term "Sealy", and upon Licensee's failure to do so, Sealy shall have the right to obtain specific relief by injunction in accordance with this provision, but such right shall be cumulative and not exclusive of any other

right which Sealy may have for Licensee's breach of this provision of the contract.

IV:11. That Sealy's patents, copyrights, trademarks, tradenames, slogans, and processes are valid and owned by Sealy, and that Licensee will not itself commit, aid, abet, nor assist, any other person, partnership, association, or corporation in committing any act which might in any wise infringe on any of said patents, copyrights, trademarks, tradenames, slogans, or processes.

IV:12. During the term or any renewal hereof, to make no disclosure, except to its own employees using the same, of any manufacturing process or formula, or machinery used for the manufacture of Sealy products or Sealy's methods of sale; and, in the manufacture of Sealy products or of Sealy's methods of sale, after the termination of this License, to make no disclosure of any such manufacturing process or formula or of the machinery used.

IV:13. Licensee will not, during the term of this License, do any act or pursue any course of action either in manufacturing, selling, merchandising, or advertising Sealy products, or in the manufacture, sale, merchandising, or advertising of any other products manufactured by Licensee, which will be detrimental or injurious to Sealy, or which will, in any way, damage, injure, deteriorate, or otherwise harmfully affect the value of any of Sealy's trademarks, tradenames, slogans, patents, processes, or which will adversely affect Sealy, its trademarks, tradenames, slogans, patents, or processes, or the products of Sealy manufactured under such processes, or, merchandised, advertised, or sold under any of Sealy's trademarks, tradenames, slogans, patents, or processes. The determination of whether any such act or series of acts shall or may have such harmful, injurious, deleterious, or [fol. 1306E] adverse effect, shall rest in the sole determination of the Board of Directors of Sealy, and upon such Board's finding that Licensee has been guilty of any such act or acts, the Board may forthwith terminate the License, but said Board shall have the sole discretion to determine that the Licensee may continue, upon proof satisfactory to the Board, that the act or acts of Licensee complained of have been discontinued or that the harm-

ful effects have either been eradicated or were of such nature as to have no permanent ill effect upon Sealy, its products, trademarks, tradenames, slogans, patents, or processes.

IV:14. To comply with such reasonable rules and regulations not inconsistent with the terms of this License as Sealy may, from time to time, establish for the manufacture and sale of Sealy products and the operation of Licensee's business as a Sealy Licensee.

IV:15. To perform in good faith each and every covenant of this agreement.

V

Royalty and Charges to be Paid by Licensee under this contract

V:1. As a consideration for its exclusive right to manufacture and sell Sealy products and to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, Licensee shall pay to Sealy the following royalty:

(a) During the term of this contract in monthly installments on the 15th day of each succeeding month, three (3) percent of all of Licensee's gross sales made during the preceding month up to One Million (\$1,000,000.00) and No/100 Dollars:

(b) When the aggregate of the monthly sales in any one year beginning January 1st, 1952, have equalled One Million (\$1,000,000.00) and No/100 Dollars, then two (2) percent of such gross sales each month from One Million (\$1,000,000.00) and No/100 Dollars to Two Million (\$2,000,000.00) and No/100 Dollars:

(c) When the aggregate of the monthly sales in any one year beginning January 1st, 1952, have equalled Two Million (\$2,000,000.00) and No/100 Dollars, then one (1) percent of such gross sales each month from Two Million (\$2,000,000.00) and No/100 Dollars to Three Million (\$3,000,000.00) and No/100 Dollars;

[fol. 1307E] (d) When the aggregate of such monthly sales in any one year beginning January 1st, 1952, have reached Three Million (\$3,000,000.00) and No/100 Dol-

lars, then two (2) percent of such gross sales each month above Three Million (\$3,000,000.00) and No/100 Dollars.

(e) Such monthly royalty or percentage on gross sales shall be not less than one-twelfth ($1/12$) of 3% of:

- (1) 70% of the sales par of Licensee for the calendar year 1952, during the year 1953;
- (2) 80% of the sales par of Licensee for the calendar year 1953, during the year 1954;
- (3) 90% of the sales par of Licensee for the year 1954, during the year 1955;
- (4) After the third year, 90% of the sales par of Licensee for the preceding year.

For the purposes of this section "sales par" is to be determined by Sealy in accordance with the plan heretofore used by Sealy for the year 1951, which for the year 1951 is agreed to be \$413,226.00. Notice of the sales par for each year after 1951 and of the minimum monthly royalty due by Licensee thereafter shall be given by Sealy to Licensee at least 40 days prior to January 1st of each year.

(f) Should Licensee fail or refuse to pay promptly when due the monthly royalty or percentage as hereinbefore set out, or should Licensee fail or refuse to pay promptly when due its annual royalty or percentage of gross sales, or should Licensee fail or refuse to pay any other indebtedness that may be due Sealy or its sources of supply promptly when due and should any one of said defaults continue for a period of 15 days beyond the due date, then Sealy, at its option, shall have the right to cancel this license forthwith, and such right shall be cumulative of any other right or remedy which Sealy may have to enforce the same and of any indebtedness that may be due it or its sources of supply.

(g) Such royalty shall be paid upon sales of Sealy products, or other like products, except sales of Licensee's manufactured products other than Sealy products [fol. 1306E] to bona fide jobbers and mail order houses

approved by Sealy or to a United States Governmental Agency or the Agency of any State or political subdivision thereof.

(h) The term "gross sales" as used herein shall not include sales of any class of manufactured products herein defined as "New Sealy Products" for which Sealy has not issued specifications and processes at the time this License Agreement dated the 1st day of October, 1952, is made, but of thereafter and during the term of this License Agreement Sealy should issue specifications and processes for the manufacture of any new class of manufactured products (herein defined as "New Sealy Products") which Licensee then manufactures, Licensee shall pay royalty on its gross sales of such "New Sealy Products" and any like products manufactured by Licensee only in the event Licensee uses the Sealy specifications and/or processes and/or methods of merchandising or selling such new class of Sealy manufactured products herein defined as "New Sealy Products".

(i) The term "New Sealy Products" shall include any products designed, developed, or authorized for manufacture by Sealy, or the specifications for the manufacture or design of which are given by Sealy, subsequent to the date of this contract, and which products were not, upon the date of this contract, either manufactured, designed, or authorized for manufacture or design, or for which no specifications for the manufacture, design, or fabrication had been issued, by Sealy on or before the date of this License.

(j) "Gross Sales" do not include P. M.'s, returns, allowances, and freight allowed customers.

(k) The term "bona fide jobbers and mail order houses" does not include any retail store outlet operated directly or indirectly by the jobber or mail order house, and any sale of Licensee's manufactured product to a retail store outlet operated directly or indirectly by a bona fide jobber or by a mail order house shall be included in Licensee's gross sales upon which the royalty, as hereinbefore provided, is to be paid by Licensee.

V:2. Licensee agrees to pay for all advertising material and other displays furnished by Sealy, or by sources designated by Sealy, upon the order of Licensee within [fol. 1309E] thirty (30) days from the date when furnished. It is, however, understood and agreed that Sealy, without order of the Licensee, may ship advertising materials and displays which Sealy deems necessary for the promotion and welfare of its business to Licensee not exceeding the sum of Four Hundred Fifty (\$450.) and No/100 Dollars per annum, and such items so shipped shall be paid for by Licensee within thirty (30) days from the date of shipment.

V:3. Licensee agrees to pay for all material, ticking, cotton, and supplies furnished Licensee by Sealy or Sealy's sources of supply at prices and upon terms agreed upon between Sealy and Licensee, but Sealy shall be under no obligation whatsoever to furnish Licensee any material, ticking, cotton innersprings, or other supplies.

V:4. Licensee agrees to pay to Sealy on demand the sum of Ten (\$10.00) and No/100 Dollars: (a) for each Sealy product manufactured, sold, or delivered by Licensee outside of Licensee's exclusive territory; (b) for each Sealy product sold if Licensee knows or should have known that the purchaser intends to resell or deliver the same for resale outside of Licensee's exclusive territory; and, (c) for each Sealy product sold or delivered to any mail order house or jobber without Sealy's written consent. Licensee further agrees to pay to Sealy on demand the full retail price of any Sealy Product manufactured or sold by Licensee to any purchaser, on the production of evidence satisfactory to Sealy that such product was not made in accordance with the Sealy specifications, or that such product was mislabeled or misbranded, or that inferior materials or workmanship were used in its manufacture; and this Agreement shall remain in full force and effect after the termination of this contract.

V:5. Subject to the provisions of Paragraph IV:6 above, Licensee agrees to pay to Sealy charges for the services rendered Licensee by Sealy's engineer at a per diem rate fixed by the Board of Directors for such service, which shall include the traveling and hotel expenses of the engineer.

VI.

Covenants of Both Parties

Both parties hereto covenant and agree:

VI:1. That within ninety (90) days from any termination of this contract, Sealy shall have the right to repurchase at Licensee's original cost all or any of the following:

[fol. 1310E] (a) The whole or any part of Sealy labels purchased by Licensee;

(b) The whole or any part of the manufactured or partially manufactured Sealy products;

(c) Raw materials, or supplies, purchased by Licensee for the manufacture of Sealy products.

VI:2. In the event Licensee becomes insolvent, or a petition is filed by or against Licensee under the provisions of the Federal Bankruptcy Act (which shall include proceedings for reorganization, adjustments with creditors, or any other form of relief under the Bankruptcy Act of the United States), or if Licensee suffers or permits a Receiver to be appointed in any insolvency proceedings in a State or Federal Court, or makes an assignment of the whole or any portion of its assets for the benefit of its creditors, or in the event Licensee suspends or discontinues its business operations for a period of three (3) months, then upon the happening of either one of said events this contract shall terminate and be at an end.

VI:3(a). Except as otherwise herein provided, if Licensee defaults in the performance or violates any provision of this Contract, Sealy shall give to the Licensee thirty (30) days written notice of its intention to terminate this Contract by reason of such violation or default; and Licensee shall be given an opportunity to be heard with respect to such default or violation prior to action being taken thereon by Sealy's Board of Directors. If such default or violation is, to the satisfaction of two-thirds ($\frac{2}{3}$) of Sealy's Board of Directors, remedied during such thirty (30) day period, beginning with the written

notice given by Sealy, then this Contract shall remain of full force and effect; but if such default or violation is not so remedied to the satisfaction of a two-thirds ($\frac{2}{3}$) majority vote of Sealy's Board of Directors, then this contract shall be at an end at the expiration of such thirty (30) day period. The determination of whether or not such default or violation is remedied shall rest in the exclusive discretion and control of the two-thirds ($\frac{2}{3}$) majority of Sealy's Board of Directors.

VI:3(b). Should Licensee fail or refuse within the time and in the manner provided in Paragraph VI:3(a) above to remedy any such default or violation and thus cause Sealy to declare this contract to be at an end, then Licensee agrees to pay Licenser as liquidated dam-[fol. 1311E] ages for such breach a sum equal to the amount of royalty paid by Licensee during the 12 months next preceding the date of the termination of this contract.

VI:3(c). Should Licensee default in the performance or violate any provisions of this contract, Licensee must give thirty (30) days written notice of its intention to terminate this contract by reason of such violation or default and if such default or violation is remedied during such thirty (30) day period, then this contract shall remain of full force and effect, and if not so remedied, then this contract shall be at an end at the expiration of such thirty (30) day period.

VI:4(a). Licensee may voluntarily terminate this contract by (1) giving Sealy two (2) months written notice of its intention so to terminate, and (2) Licensee shall pay to Sealy as consideration for its release from this contract a sum equal to twelve (12) months' minimum royalty. Upon the giving of such notice by Licensee, and the payment of such sum, the contract shall be at an end at the expiration of the two (2) months' period, beginning with the date of the written notice herein provided for.

VI:4(b). In the event Licensee voluntarily or involuntarily suspends or discontinues its business operations for a period of three (3) months, Sealy shall have the right to recover as liquidated damages for such breach a sum equal to the amount of royalty paid by Licensee during

the twelve (12) months next preceding the date when Licensee began the suspension or discontinuance of its business, or a sum equal to twelve (12) months' minimum royalty, as provided in this contract, whichever is greater.

VI:5(a). After the termination of this contract for any reason, Licensee agrees that it will not in the manufacture, sale, or advertising of any of its products use the name "Sealy" or any Sealy patents, secret methods, specifications, or processes which Licensee has at any time used in the manufacture, sale, and advertising of Sealy products.

VI:5(b). If, after having received notice from Sealy of the termination of this License for any reason, Licensee shall continue to use the name "Sealy", or shall use any Sealy patents, secret methods, specifications, or processes [fol. 1312E] in the manufacture, sale, or advertising of its products, or represent that it is a Licensee of Sealy; Sealy shall, in addition to any other remedy provided by law or in equity, be entitled to recover from the Licensee as liquidated damages a sum equal to three (3) times the amount of minimum monthly royalty called for in V:1(a) of this contract for each month or part thereof in which Licensee shall use the name "Sealy" or shall use any Sealy patents, secret methods, specifications, or processes in the manufacture, sale, or advertising of its products, or represent that it is a Licensee of Sealy.

VI:6. Failure of Sealy to act upon breach or violation of this contract, or to notify Licensee of any breach or violation of this contract, shall not constitute a waiver of any such breach or violation or if Sealy's right to terminate this contract at a later date because of such breach or violation.

VI:7. This contract is a personal contract between the parties hereto, and may not be assigned, nor may any of the rights thereunder be transferred in any manner by Licensee without Sealy's written consent; and such consent must be procured in the event Licensee is a corporation, and there is any change in the ownership of stock therein whereby the voting control of the corporation is vested in persons other than those holding such voting control therein as of the date of this contract, provided

that there shall be deemed to be no change in the voting control of the corporation Licensee in the event such voting control is exercised by the Executors or Administrators of a deceased stockholder or stockholders, or by a Trustee or Trustees under a testamentary or inter vivos trust executed by a stockholder or stockholders for the benefit of relatives within the second degree.

VI:8. That Licensee has no authority to bind Sealy upon any contract or obligation whatsoever. Nothing in this contract shall be construed as constituting Licensee as agent for Sealy for any purpose other than the appointment of Licensee to use and utilize the patents, trademarks, tradenames, slogans, processes, and specifications as provided in this License.

VI:9. Sealy shall not be liable to any person, firm, or corporation for any acts or omissions of Licensee or for unsatisfactory merchandise, made or sold by Licensee, or for any misrepresentations made by Licensee.

[fol. 1313E]

VII

All notices provided for to be given under this contract shall be in writing.

VIII

This contract shall be separable, and if any portion hereof shall be held invalid for any reason, the remainder shall not thereby be invalidated but shall remain in full force and effect.

IX

Except where Sealy's Board of Directors is specifically required to act under any provision of this contract, the term "Sealy's Board of Directors" shall be deemed to include the whole Board of Directors or the Executive Committee thereof.

X

This contract shall be governed by the laws of the State of Illinois, and shall not become binding upon or effective until a copy thereof, executed by Licensee, shall be received by Sealy at its office in Chicago, Illinois.

XI

This contract constitutes the sole and entire agreement between Sealy and Licensee, and no modification thereof shall be binding unless attached hereto and signed by each party, and no representations, promises, or inducements shall be binding upon Sealy or Licensee except as herein stated.

In Witness Whereof, the parties hereto each acting through its duly authorized officers, have hereunto set their hands and affixed their seals, on this, the day and year first above written.

Sealy, Incorporated, (Seal), By: E. H. Bergmann,
President.

Attest:

J. D. Sommen, V.P.

David Manufacturing Company, By: Inedon Gale,
President.

Attest:

Chester B. Kaplan, Secretary.

[fol. 1314E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1065

This Agreement, made and entered into this, the 1st day of November, 1952, by and between Sealy, Incorporated, a Delaware Corporation, hereinafter called "Sealy", party of the first part, and Peerless Mattress Company, Inc., a corporation of North Carolina, with principal offices in Lexington, N. C., hereinafter called "Licensee", party of the second part:

Witnesseth:

Whereas, Sealy is the owner of patents, trademarks, tradenames, copyrights, slogans, secret methods, processes, and specifications, for use in the design, manufacture and sale of mattresses, studio couches, sofa beds, bed springs, bedding, dual sleeping equipment, and similar products, and from time to time originates and develops additional patents, secret methods, processes, and specifications (which may or may not be copyrighted) for the design and manufacture of the above named products, and also originates additional trademarks, tradenames, copyrights, slogans, and methods for the sale of such products, and has extensively advertised the name "Sealy and its trademarks, tradenames, and slogans; and,

Whereas, Licensee desires to manufacture and sell to retail stores Sealy products within an exclusive territory under the terms and conditions hereinafter set forth, and to use Sealy's patents, trademarks, tradenames, copyrights, slogans, secret manufacturing methods, processes, and specifications; to use Sealy's methods for merchandising and selling, and to obtain the benefit of Sealy's advertising of its name, its trademarks, tradenames, copyrights, and slogans;

Now, Therefore, for and in consideration of the covenants and agreements from one party to the other party, as hereinafter set forth, and of their prompt and punctual performance by each party, and of other valuable consid-

eration, the receipt of which is hereby acknowledged, It is Agreed:

I

Definitions

I:1. The term "Sealy products" is defined to include mattresses, including ensembles, studio couches, divans, [fol. 1315E] studio lounge beds, sofa beds, and any other upholstered furniture convertible to or usable as a bed, chairs matching the last four (4) mentioned items, bed springs, box springs, foundation units, pillows, cushions, comforts, similar and related articles, and any other items as may, from time to time, be developed, designed, manufactured, or the specifications for the manufacture of which may be issued by Sealy, or which may be authorized by Sealy for manufacture and sale by its licensees. Under Sealy's supervision, and shall also include any and all items sold under any trademark, tradename, or slogan of Sealy or "Crestline". Except as specifically herein-after provided in this contract, the term "Sealy products" shall include both the Sealy and Crestline manufactured products.

I:2. Sealy trademarks, tradenames, or slogans, whether or not registered, are defined as "Crestline", "Sealy Rest", "Sealy Tuftless", "Cotton Boll", "Truease", "Texlan", "Luxel", "Sunspun", "Durolife", "Posture Pillow", "Fast-Asleep", "Sleep Charm", "Natural Rest", "Air Vent", "Sleep Joy", "Sealy Kraft", "Airlite", "Enchanted Nights", "Airwoven", "Vital Third", "A Giant Pillow for the Body", "Sleeping on a Sealy is like Sleeping on a Cloud", "Prize Winner", "Good Homekeeper", "Miracle Mesh", "Golden Sleep", "Posturepedic", "Firm-O-Rest", "Sleep Lounge", and such other trademarks, tradenames, and slogans as Sealy may hereafter, from time to time, use and disclose to Licensee. Licensee may be permitted by the Board of Directors of Sealy, Incorporated, to use any other trademark, tradename, slogan which does not infringe upon any trademark, tradename, or slogan used by Sealy, and if permission is granted by Sealy to use

such trademark, tradename, or slogan, such trademark, tradename, or slogan shall become the property of Sealy.

I:3. "Territory" is defined as the area, more fully described in II:2 below, in which the Licensee shall have the right, subject to the covenants and conditions hereinafter set forth, to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and for such purpose only, to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications.

I:4. "Licensee" is defined as the person, firm, or corporation to whom Sealy allocates a specified area in which such person, firm, or corporation only shall manufacture [fol. 1316E] and sell Sealy products to retail stores, hospitals, and hotels, and for such purpose shall have the exclusive right to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, and use Sealy labels.

I:5. "Specifications" are defined to mean the written instructions or directions issued from time to time by Sealy specifying the type, quality, and quantity of materials to be used, and the methods and processes to be followed in the manufacture and fabrication of Sealy products.

II

Licensee's Territory and Term of Contract and Renewal

II:1. Party of the second part is named the sole and exclusive Licensee under this agreement, and shall have the sole right to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and use Sealy labels affixed to such products in the territory described in Paragraph II:2 below for the term of this license or any extension thereof.

II:2. The territory in which Licensee shall have the sole right to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, is as follows:

State of South Carolina—Entire State.

State of North Carolina—Following counties:

Anson	Mecklenburg	Craven
Bladen	Mitchell	Davidson
Brunswick	Montgomery	Davie
Buncombe	Moore	Duplin
Cabarrus	New Hanover	Durham
Cherokee	Pender	Forsyth
Clay	Polk	Franklin
Cleveland	Richmond	Granville
Columbus	Robeson	Greene
Cumberland	Rowan	Guilford
Gaston	Rutherford	Iredell
Graham	Sampson	Johnston
Harnett	Scotland	Jones
Haywood	Stanly	Lenoir
Henderson	Swain	Onslow
Hoke	Transylvania	Orange
Jackson	Union	Person
Lee	Yancey	Randolph
Lincoln	Almance	Wake
McDowell	Carteret	Wayne
Macon	Caswell	Wilson
Madison	Chatham	

[fol. 1317E] II:3. The term of this contract shall be for 3 years and 2 months beginning the 1st day of November, 1952, and ending the 31st day of December, 1955, unless sooner terminated by the agreement of the parties or under the provisions of this License.

II:4. If Licensee shall well and truly perform each and every covenant of this contract during the full time thereof, including, without intending to limit the generality of the foregoing, specific compliance with the provisions of Sec. IV:3 below, and time being of the essence, then Licensee shall be entitled to one renewal of this license agreement for a period of five (5) years from the date of the expiration hereof, provided that Sealy shall have the right to increase the minimum royalty to be paid by Licensee during such renewal period, to a maximum of twenty-five (25) percent of the minimum royalty provided in Paragraph V:1(b) below. Notice of the exercise of

this right of renewal shall be given in writing by the Licensee to Sealy at least six (6) months prior to the expiration date of this contract.

II:5. If the Licensee shall well and truly perform during the full period of this contract [* * *] each and every covenant of this contract and of the renewal contract, including specifically, but without intending to limit the generalities of the foregoing, specific compliance with the provisions of Paragraph IV:3 below, and time being of the essence, then the renewal of this license shall remain in full force and effect so long as the Licensee shall continue to well and truly perform each and every covenant of this Agreement and of the renewal thereof; provided that Sealy shall have the right at the beginning of each five (5) year period beginning Jan. 1, 1961, which is designated as the anniv. date of this C(ontract)", to increase the minimum royalty to be paid by the Licensee thereafter, a maximum of twenty-five (25) percent of the amount of minimum royalty being paid by the Licensee during the next preceding five (5) year period.

III

Sealy's Covenants and Agreements

Sealy covenants and agrees while this contract is in full force and effect:

[fol. 1318E] III:1. To permit Licensee, in the manufacture and sale of Sealy products, the use of Sealy patents, copyrights, trademarks, tradenames, slogans, exclusive rights, and licenses in the manner and form prescribed by Sealy.

III:2. To furnish Licensee true and correct copies of specifications currently used in the manufacture of Sealy products. Such specifications may be changed at any time by Sealy, and when changed, written notice thereof together with the new specifications shall be furnished by Sealy to Licensee, and after thirty (30) days from the date of such notice shall become the specifications to which all Sealy products thereafter manufactured by Licensee must conform. The Board of Directors and/or President are authorized to grant Licensee sufficient time

beyond the thirty (30) day period, hereinafter provided, within which to dispose of inventories rendered obsolete by change in specifications.

III:3. To furnish Licensee full information concerning its methods and processes of manufacture and sale. Such methods and processes may be changed, from time to time, by Sealy, and, when changed, written notice thereof, together with the new methods and processes shall be furnished by Sealy to Licensee, and after thirty (30) days from the date of such notice shall become the methods and processes to which all Sealy products thereafter manufactured by Licensee must conform. If any of such processes or methods, furnished by Sealy to Licensee, should in any wise violate any of the laws, rules, or regulations of the United States Government or any of its Agencies, or the laws of the State in which Licensee manufactures or sells, then such processes or methods shall not be binding upon or enforceable against Licensee. The Board of Directors and/or President are authorized to grant Licensee sufficient time beyond the thirty (30) day period, hereinbefore provided, within which to dispose of inventories rendered obsolete by changes of process or methods of manufacture.

III:4. To defend at Sealy's expense any and all suits against Licensee for patent or trademark infringement because of Licensee's use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the manufacture of Sealy products, provided:

[fol. 1319E] (a) That the said Sealy products were manufactured at the time of the alleged infringement in accordance with Sealy specifications.

(b) As conditions precedent for such protection Licensee shall give notice:

(1) By registered mail to Sealy at its office in Chicago, Illinois, promptly, of any claim of infringement against Licensee because of Licensee's use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the manufacture of Sealy products, and in such notice shall advise Sealy all facts concerning such alleged claim for infringement; and,

(2) In the event any suit should be filed against Licensee based upon such alleged infringement, to forward to Sealy at its office in Chicago, Illinois the complaint, petition, or copy thereof, in said cause within two (2) days after service of said complaint or petition upon Licensee.

III:5. Sealy shall in no event incur any liability because of any claim, demand, or suit for infringement until such liability shall have been finally determined in a court of last resort after actual trial, and unless Sealy shall have been given the notice, as herein provided, of the filing of any claim, demand, or suit against Licensee for such alleged infringement.

III:6. Sealy will not manufacture nor sell, nor will it without the consent of Licensee contract with or permit any other person, partnership, association, or corporation, to manufacture or sell Sealy products within the territory allocated to Licensee so long as this contract is in force; and Sealy will prevent, insofar as it is legally permitted, the manufacture, sale or shipment of Sealy products in said territory by any other person, partnership association, or corporation, except that Sealy, directly or through subsidiary, or by contract with another manufacturer shall have the right to manufacture and sell bed springs, sofa and divan springs, and springs of all types within the territory covered by this contract to Licensee, and if, for any reason, the Licensee in the territory [fol. 1320E] does not desire to purchase all of such springs offered by Sealy in such territory, then to sell such springs to other persons, firms, or corporations in the territory covered by this contract, but not as Sealy products nor bearing Sealy labels.

III:7. Sealy will pay to Licensee as liquidated damages Ten (\$10.00) and no/100 Dollars for each Sealy product sold or shipped by Sealy into Licensee's exclusive territory; and Sealy will pay Ten (\$10.00) and no/100 Dollars, less the cost of collection for each such article sold or shipped in Licensee's exclusive territory by any person, partnership, association, or corporation having in force a contract with Sealy identical with or similar to this contract; provided that Sealy has there-

tofore collected said Ten (\$10.00) and no/100 Dollars for each such article from said person, partnership, association, or corporation manufacturing or selling such articles. But this provision shall not apply to the sale of Furniture Market Samples of Sealy, Incorporated, or to those products excepted in Paragraph III:6 hereof.

III:8. To permit Licensee, upon written request, to use the term "Sealy" in its corporate or business name, but only in connection with the manufacture and sale of Sealy products and not for the manufacture and sale of any other products.

III:9. To use and expend at least fifty (50 percent of the amount paid it as royalties under Paragraph V:1 and V:3 of this contract and other similar contracts which Sealy has with its Licensees, for national and other advertising, merchandising, and general sales promotion of Sealy products throughout the United States, it being understood that the amount expended by Sealy for (a) salaries, office, and administrative costs, and (b) for payments to Licensees for Sealy's share of local advertisement in Licensee's territory, are considered a part of such advertising, merchandising, and sales promotion expense. The type of advertising, merchandising and sales promotion, and the amount expended for each of such items and when such expenditure shall be made, shall be determined by Sealy Board of Directors.

IV

Licensee's Covenants and Agreements

Licensee covenants and agrees:

[fol. 1321E] IV:1. To manufacture, during the term of this Agreement or any renewal thereof, at Licensee's own expense, Sealy products, in the designated territory, strictly in accordance with Sealy specifications, patents, processes, exclusive rights, and licenses now owned or controlled, or hereafter acquired by Sealy, and not to use or utilize any of such specifications, patents, processes, exclusive rights, and licenses in the manufacture of any other products; and to comply with changes made by Sealy in the specifications of all Sealy products or in the methods

or process of their manufacture within the time or extension thereof, as provided in Paragraphs III:2 and III:3 hereof; and to sell Sealy products to retail stores and others subject to the provisions of this License.

IV:2. To use exclusively in the manufacture of Sealy products and for no other purpose, all items and/or supplies determined by Sealy to be exclusive for Sealy products, whether supplied by or procured through Sealy or purchased by the Licensee from any other source.

IV:3. To maintain in the designated territory such facilities for the manufacture of all Sealy mattresses and box springs (exclusive of Crestline mattresses) as shall be deemed adequate by a two-thirds majority vote of Sealy's Board of Directors; and to maintain such selling force for the sale of Sealy products as are manufactured by Licensee, in constant and continuous effort in the designated territory, as Sealy by a two-thirds majority vote of its Board of Directors shall deem adequate. Failure of Licensee to maintain such adequate manufacturing facilities and selling force shall be a violation of this License, and Sealy by a two-thirds majority vote of its Board of Directors shall have the right forthwith to terminate same by written notice addressed to Licensee at its last known place of business.

IV:4. That Licensee shall not:

(a) Manufacture, sell, or deliver within Licensee's exclusive territory any products competitive to Sealy which bear labels, trademarks, tradenames, or slogans of any nationally advertised competitor of Sealy.

(b) Sell or deliver any Sealy products outside of Licensee's exclusive territory, nor sell nor deliver Sealy products if Licensee knows or has reason to believe that [fol. 1322] the purchaser intends to resell or deliver the same for resale out of Licensee's exclusive territory; nor

(c) Sell or deliver any Sealy products to wholesalers, distributors, or mail order houses without first having obtained from Sealy permission to make such sale.

IV:5. To advertise Sealy products by means embodying and employing Sealy trademarks, tradenames, copyrights, slogans, or designs; and, upon request, either oral or in writing, by Sealy, to forthwith discontinue any advertising objectionable to Sealy; not to advertise nor represent that any of Licensee's products other than Sealy products are manufactured or sold by the makers of Sealy products unless so authorized by the President of Sealy or its Board of Directors; and if so authorized, to discontinue said form of advertising immediately upon request of Sealy or its President; not to advertise nor represent a product as a Sealy product unless it is a Sealy product manufactured in accordance with the provisions of this contract and the specifications (pertaining to such product) issued by Sealy; not to use the Sealy name in connection with Licensee's advertisement or sales other than in the advertisement and sale of Sealy products; to use letterheads, billheads, invoices, envelopes, business cards, bearing the name "Sealy" in the transaction of business involving Sealy products; not to use Licensee's own name or corporate name (other than "Sealy") or any private brand, label or slogan, letterheads, billheads, or invoices in connection with the advertisement or sale of Sealy products; in no manner to trade on the prestige of Sealy nor to make use of the fact that Licensee is a manufacturer of Sealy merchandise and a Sealy Licensee, except in the sale of Sealy products; it being expressly agreed that Licensee shall not use or trade upon the Sealy name, prestige, nor the fact that the party of the second part is a Sealy Licensee except in the territory covered by this contract and in connection with the sale of Sealy products.

IV:6. To permit Sealy to exercise supervision and control over the manufacture, advertising, and sale by Licensee of Sealy products, so as to insure Licensee's conforming to Sealy's specifications, processes, and methods of manufacture and sale of Sealy products, and [fol. 1323E] uniformity in said products; and in order to better enable Sealy to exercise such supervision and control, Licensee agrees to furnish Sealy specimens of Manufactured products and samples of material used in manu-

facturing, and to afford representatives of Sealy, including Sealy's engineer, access at reasonable hours to its plant, warehouse and records appertaining to the manufacture and sale of Sealy products. Sealy's engineer shall visit Licensee's plant at least once each year for a period not exceeding six (6) days, the expense for the engineer's service, including his compensation, to be paid for by Licensee. If Licensee requests an additional visit or visits by Sealy's engineer during any yearly period of this License (beginning January 1st of each year), the expense of such engineer, as hereinafter provided, shall be paid by Licensee; otherwise, no charge shall be made upon Licensee for such additional visit or visits by Sealy's engineer.

IV:7. To keep detailed, accurate, and complete records of all Sealy products and all other products of like kind manufactured by Licensee during each month in Licensee's exclusive territory; and to afford to Sealy and its representatives access, at reasonable hours, to all of its records for the purpose of inspection, copy, or audit of said records; and to send to Sealy on or before the 15th day of each month a true and complete report showing the quantity of all products subject to royalty payments manufactured and sold by Licensee during the preceding month.

IV:8. To affix to all Sealy products sold and manufactured and/or sold, and/or shipped, in Licensee's territory, the form of label and/or trademark, or tradename, or slogan, as prescribed by Sealy; to place on Sealy products in the form and at the position thereon, as prescribed by Sealy, such other or supplementary labels, trademarks, tradenames, or slogans as Sealy may, from time to time, determine; and not to affix or attach a label containing the name "Sealy" in any form, nor any of Sealy's trademarks, tradenames, slogans or labels to a product other than one manufactured by Licensee in accordance with this contract and the specifications of Sealy issued hereunder.

IV:9. To purchase from Sealy and to pay Sealy there-[fol. 1324E] for the labels designated by Sealy to be affixed to Sealy products.

IV:10. If, during the term of this contract, Licensee

has obtained Sealy's consent to use the term "Sealy" in its corporate or business name, Licensee will, upon the termination of this contract for any reason whatsoever, immediately eliminate from its corporate or business name the term "Sealy", and upon Licensee's failure to do so, Sealy shall have the right to obtain specific relief by injunction in accordance with this provision, but such right shall be cumulative and not exclusive of any other right which Sealy may have for Licensee's breach of this provision of the contract.

IV:11. That Sealy's patents, copyrights, trademarks, tradenames, slogans, and processes are valid and owned by Sealy, and that Licensee will not itself commit, aid, abet, nor assist, any other person, partnership, association, or corporation in committing any act which might in any wise infringe on any of said patents, copyrights, trademarks, tradenames, slogans, or processes.

IV:12. During the term or any renewal hereof, to make no disclosure, except to its own employees using the same, of any manufacturing process or formula, or machinery used for the manufacture of Sealy products or Sealy's methods of sale; and, in the manufacture of Sealy products or of Sealy's methods of sale, after the termination of this License, to make no disclosure of any such manufacturing process or formula or of the machinery used.

IV:13. Licensee will not, during the term of this License, do any act or pursue any course of action either in manufacturing, selling, merchandising, or advertising Sealy products, or in the manufacture, sale, merchandising, or advertising of any other products manufactured by Licensee, which will be detrimental or injurious to Sealy, or which will, in any way, damage, injure, deteriorate, or otherwise harmfully affects the value of any of Sealy's trademarks, tradenames, slogans, patents, processes, or which will adversely affect Sealy, its trademarks, tradenames, slogans, patents, or processes, or the products of Sealy manufactured under such processes, or merchandised, advertised, or sold under any of Sealy's trademarks, tradenames, slogans, patents, or processes. The determination of whether any such act or series of acts shall or may have such harmful, injurious, deleterious, or

[fol. 1325E] adverse effect, shall rest in the sole determination of the Board of Directors of Sealy, and upon such Board's finding that Licensee has been guilty of any such act or acts, the Board may forthwith terminate the License, but said Board shall have the sole discretion to determine that the Licensee may continue, upon proof satisfactory to the Board, that the act or acts of Licensee complained of have been discontinued or that the harmful effects have either been eradicated or were of such nature as to have no permanent ill effect upon Sealy, its products, trademarks, tradenames, slogans, patents, or processes.

IV:14. To comply with such reasonable rules and regulations not inconsistent with the terms of this License as Sealy may, from time to time, establish for the manufacture and sale of Sealy products and the operation of Licensee's business as a Sealy Licensee.

IV:15. To perform in good faith each and every covenant of this agreement.

V

Royalty and Charges to be Paid by Licensee Under this Contract

V:1. As a consideration for its exclusive right to manufacture and sell Sealy products and to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, Licensee shall pay to Sealy the following royalty:

(a) During the term of this contract in monthly installments on the 15th day of each succeeding month, three (3) percent of all of Licensee's gross sales of Sealy products only made during the preceding month up to One Million (\$1,000,000.00) and No/100 Dollars:

(b) When the aggregate of such monthly sales in any one year beginning January 1, 1952, have equalled One Million (\$1,000,000.00) and No/100 Dollars, then two (2) percent of such gross sales each month from One Million (\$1,000,000.00) and No/100 Dollars to Two Million (\$2,000,000.00) and No/100 Dollars:

(c) When the aggregate of such monthly sales in any one year beginning January 1, 1952, have equalled Two Million (\$2,000,000.00) and No/100 Dollars, then one (1) percent of such gross sales each month from Two Million (\$2,000,000.00) and No/100 Dollars to Three Million (\$3,000,000.00) and No/100 Dollars;

[fol. 1326E] (d) When the aggregate of such monthly sales in any one year beginning January 1, 1952, have reached Three Million (\$3,000,000.00) and No/100 Dollars, then two (2) percent of such gross sales each month above Three Million (\$3,000,000.00) and No/100 Dollars.

(e) Such monthly royalty or percentage on gross sales shall be not less than one-twelfth ($1/12$) of 3% of:

(1) 70% of the sales par of Licensee for the calendar year 1951, during the year 1952;

(2) 80% of the sales par of Licensee for the calendar year 1952, during the year 1953;

(3) 90% of the sales par of Licensee for the year 1953, during the year 1954;

(4) After the year 1954, 90% of the sales par of Licensee for the preceding year.

In addition to the above royalties payable on Sealy products, Licensee shall also pay royalties in monthly installments on products of Licensee other than Sealy products as follows:

(1) During the year 1953, nothing;

(2) During the year 1954, $\frac{1}{2}$ of 1% of the sales of such products;

(3) During the year 1955, 1% of the sales of such products;

(4) In the event of a renewal of this contract under the provisions of paragraph II (4), then during the year 1956, $1\frac{1}{2}\%$ of such sales; and then each year thereafter the percentage payable upon the sales of such other products shall increase $\frac{1}{2}$ of 1% until the royalties on

such other products equals 3%; thereafter, such royalties on other products shall also be 3% of such sales.

(5) When the royalties payable by Licensee on all of its products (that is, as provided in sub-paragraphs (a), (b), (c) and (d) for Sealy products; and (e) for non-Sealy products) under this contract or any renewal thereof is 3%, and in no event later than January 1, 1959, then such monthly royalty or percentage of sales shall not be less than $\frac{1}{12}$ of 3% of 90% of the sales par of Licensee for the year 1958, and thereafter such monthly royalty shall not be less than $\frac{1}{12}$ of 3% of 90% of the sales par of Licensee for the preceding year.

(6) Nothing contained herein shall be deemed to give Licensee any right to a renewal except such right as is contained in paragraphs II (4) and II (5) of this contract, in which event the provisions of this paragraph V.

(e)(4) and (5) shall apply on products other than Sealy products.

[fol. 1327E] For the purposes of this section "sales par" is to be determined in accordance with the plan heretofore used by Sealy for the year 1951, which for the year 1951 is agreed to be \$600,000.00. Notice of the sales par for each year after it becomes applicable and of the minimum monthly royalty due by Licensee thereafter shall be given by Sealy to Licensee at least 40 days prior to the beginning of the calendar year.

(f) Should Licensee fail or refuse to pay promptly when due the monthly royalty or percentage as hereinbefore set out, or should Licensee fail or refuse to pay promptly when due its annual royalty or percentage of gross sales, or should Licensee fail or refuse to pay any other indebtedness that may be due Sealy or its sources of supply promptly when due and should any one of said defaults continue for a period of 15 days beyond the due date, then Sealy, at its option, shall have the right to cancel this license forthwith, and such right shall be cumulative of any other right or remedy which Sealy may have to enforce the same and of any indebtedness that may be due it or its sources of supply.

(g) Such royalty shall not be paid upon sales of Licensee's manufactured products other than Sealy products to bona fide jobbers and mail order houses approved by Sealy or to a United States Government Agency or the Agency of any State or political subdivision thereof.

[fol. 1328E] (h) The term "gross sales" as used herein shall not include sales of any class of manufactured products herein defined as "New Sealy Products" for which Sealy has not issued specifications and processes at the time this License Agreement dated the 1st day of November, 1952, is made, but of thereafter and during the term of this License Agreement Sealy should issue specifications and processes for the manufacture of any new class of manufactured products (herein defined as "New Sealy Products") which Licensee then manufactures, Licensee shall pay royalty on its gross sales of such "New Sealy Products" and any like products manufactured by Licensee only in the event Licensee uses the Sealy specifications and/or processes and/or methods of merchandising or selling such new class of Sealy manufactured products herein defined as "New Sealy Products".

(i) The term "New Sealy Products" shall include any products designed, developed, or authorized for manufacture by Sealy, or the specifications for the manufacture or design of which are given by Sealy, subsequent to the date of this contract, and which products were not, upon the date of this contract, either manufactured, designed, or authorized for manufacture or design, or for which no specifications for the manufacture, design, or fabrication had been issued, by Sealy on or before the date of this License.

(j) "Gross Sales" do not include P. M.'s, return, allowances, and freight allowed customers.

(k) The term "bona fide jobbers and mail order houses" does not include any retail store outlet operated directly or indirectly by the jobber or mail order house, and any sale of Licensee's manufactured product to a retail

store outlet operated directly or indirectly by a bona fide jobber or by a mail order house shall be included in Licensee's gross sales upon which the royalty, as hereinbefore provided, is to be paid by Licensee.

V:2. Licensee agrees to pay for all advertising material and other displays furnished by Sealy, or by sources designated by Sealy, upon the order of Licensee within thirty [fol. 1329E] (30) days from the date when furnished. It is, however, understood and agreed that Sealy, without order of the Licensee, may ship advertising materials and displays which Sealy deems necessary for the promotion and welfare of its business to Licensee not exceeding the sum of Four Hundred Fifty (\$450.) and No/100 Dollars per annum, and such items so shipped shall be paid for by Licensee within thirty (30) days from the date of shipment.

V:3. Licensee agrees to pay for all material, ticking, cotton, and supplies furnished Licensee by Sealy or Sealy's sources of supply at prices and upon terms agreed upon between Sealy and Licensee, but Sealy shall be under no obligation whatsoever to furnish Licensee any material, ticking, cotton, innersprings, or other supplies.

V:4. Licensee agrees to pay to Sealy on demand the sum of Ten (\$10.00) and No/100 Dollars: (a) for each Sealy product manufactured, sold, or delivered by Licensee outside of Licensee's exclusive territory; (b) for each Sealy product sold if Licensee knows or should have known that the purchaser intends to resell or deliver the same for resale outside of Licensee's exclusive territory; and, (c) for each Sealy product sold or delivered to any mail order house or jobber without Sealy's written consent. Licensee further agrees to pay to Sealy on demand the full retail price of any Sealy Product manufactured or sold by Licensee to any purchaser, on the production of evidence satisfactory to Sealy that such product was not made in accordance with the Sealy specifications, or that such product was mislabeled or misbranded, or that inferior materials or workmanship were used in its manufacture; and this Agreement shall remain in full force and effect after the termination of this contract.

V:5. Subject to the provisions of Paragraph IV:6 above, Licensee agrees to pay to Sealy charges for the services rendered Licensee by Sealy's engineer at a per diem rate fixed by the Board of Directors for such service, which shall include the traveling and hotel expenses of the engineer.

VI

Covenants of Both Parties

Both parties hereto covenant and agree:

VI:1. That within ninety (90) days from any termination of this contract, Sealy shall have the right to repurchase at Licensee's original cost all or any of the following:

[fol. 1330E] (a) The whole or any part of Sealy labels purchased by Licensee;

(b) The whole or any part of the manufactured or partially manufactured Sealy products;

(c) Raw materials, or supplies, purchased by Licensee for the manufacture of Sealy products.

VI:2. In the event Licensee becomes insolvent, or a petition is filed by or against Licensee under the provisions of the Federal Bankruptcy Act (which shall include proceedings for reorganization, adjustments with creditors, or any other form of relief under the Bankruptcy Act of the United States), or if Licensee suffers or permits a Receiver to be appointed in any insolvency proceedings in a State or Federal Court, or makes an assignment of the whole or any portion of its assets for the benefit of its creditors, or in the event Licensee suspends or discontinues its business operations for a period of three (3) months, then upon the happening of either one of said events this contract shall terminate and be at an end.

VI:3(a). Except as otherwise herein provided, if Licensee defaults in the performance or violates any provision of this Contract, Sealy shall give to the Licensee thirty (30) days written notice of its intention to termi-

terminate this Contract by reason of such violation or default; and Licensee shall be given an opportunity to be heard with respect to such default or violation prior to action being taken thereon by Sealy's Board of Directors. If such default or violation is, to the satisfaction of two-thirds ($\frac{2}{3}$) of Sealy's Board of Directors, remedied during such thirty (30) day period, beginning with the written notice given by Sealy, then this Contract shall remain of full force and effect; but if such default or violation is not so remedied to the satisfaction of a two-thirds ($\frac{2}{3}$) majority vote of Sealy's Board of Directors, then this contract shall be at an end at the expiration of such thirty (30) day period. The determination of whether or not such default or violation is remedied shall rest in the exclusive discretion and control of the two-thirds ($\frac{2}{3}$) majority of Sealy's Board of Directors.

VI:3(b). Should Licensee fail or refuse within the time and in the manner provided in Paragraph VI:3(a) above to remedy any such default or violation and thus cause Sealy to declare this contract to be at an end, then Licensee agrees to pay Licensor as liquidated damages [fol. 1331E] for such breach a sum equal to the amount of royalty paid by Licensee during the 12 months next preceding the date of the termination of this contract.

VI:3(c). Should Licensee default in the performance or violate any provisions of this contract, Licensee must give thirty (30) days written notice of its intention to terminate this contract by reason of such violation or default and if such default or violation is remedied during such thirty (30) day period, then this contract shall remain of full force and effect, and if not so remedied, then this contract shall be at an end at the expiration of such thirty (30) day period.

VI:4(a). Licensee may voluntarily terminate this contract by (1) giving Sealy two (2) months written notice of its intention so to terminate, and (2) Licensee shall pay to Sealy as consideration for its release from this contract a sum equal to twelve (12) months' minimum royalty. Upon the giving of such notice by Licensee, and the payment of such sum, the contract shall be at an end

at the expiration of the two (2) months' period, beginning with the date of the written notice herein provided for.

VI:4(b). In the event Licensee voluntarily or involuntarily suspends or discontinues its business operations for a period of three (3) months, Sealy shall have the right to recover as liquidated damages for such breach a sum equal to the amount of royalty paid by Licensee during the twelve (12) months next preceding the date when Licensee began the suspension or discontinuance of its business; or a sum equal to twelve (12) months' minimum royalty, as provided in this contract, whichever is greater.

VI:5(a). After the termination of this contract for any reason, Licensee agrees that it will not in the manufacture, sale, or advertising of any of its products use the same "Sealy" or any Sealy patents, secret methods, specifications, or processes which Licensee has at any time used in the manufacture, sale, and advertising of Sealy products.

VI:5(b). If, after having received notice from Sealy of the termination of this License for any reason, Licensee shall continue to use the name "Sealy", or shall use any Sealy patents, secret methods, specifications, or processes [fol. 1332E] in the manufacture, sale, or advertising of its products, or represent that it is a Licensee of Sealy, Sealy shall, in addition to any other remedy provided by law or in equity be entitled to recover from the Licensee as liquidated damages a sum equal to three (3) times the amount of minimum monthly royalty called for in V:1(a) of this contract for each month or part thereof in which Licensee shall use the name "Sealy" or shall use any Sealy patents, secret methods, specifications, or processes in the manufacture, sale, or advertising of its products, or represent that it is a Licensee of Sealy.

VI:6. Failure of Sealy to act upon breach or violation of this contract, or to notify Licensee of any breach or violation of this contract, shall not constitute a waiver of any such breach or violation or if Sealy's right to terminate this contract at a later date because of such breach or violation.

VI:7. This contract is a personal contract between the parties hereto, and may not be assigned, nor may any of

the rights thereunder be transferred in any manner by Licensee without Sealy's written consent; and such consent must be procured in the event Licensee is a corporation, and there is any change in the ownership of stock therein whereby the voting control of the corporation is vested in persons other than those holding such voting control therein as of the date of this contract, provided that there shall be deemed to be no change in the voting control of the corporation Licensee in the event such voting control is exercised by the Executors or Administrators of a deceased stockholder or stockholders, or by a Trustee or Trustees under a testamentary or inter vivos trust executed by a stockholder or stockholders for the benefit of relatives within the second degree.

VI:8. That Licensee has no authority to bind Sealy upon any contract or obligation whatsoever. Nothing in this contract shall be construed as constituting Licensee as agent for Sealy for any purpose other than the appointment of Licensee to use and utilize the patents, trademarks, tradenames, slogans, processes, and specifications as provided in this License.

VI:9. Sealy shall not be liable to any person, firm, or corporation for any acts or omissions of Licensee or for unsatisfactory merchandise, made or sold by Licensee, for any misrepresentations made by Licensee.

[fol. 1333E]

VII

All notices provided for to be given under this contract shall be in writing.

VIII

This contract shall be separable, and if any portion hereof shall be held invalid for any reason, the remainder shall not thereby be invalidated but shall remain in full force and effect.

IX

Except where Sealy's Board of Directors is specifically required to act under any provision of this contract, the term "Sealy's Board of Directors" shall be deemed to include the whole Board of Directors or the Executive Committee thereof.

X

This contract shall be governed by the laws of the State of Illinois, and shall not become binding upon or effective until a copy thereof, executed by Licensee, shall be received by Sealy at its office in Chicago, Illinois.

XI

This contract constitutes the sole and entire agreement between Sealy and Licensee, and no modification thereof shall be binding unless attached hereto and signed by each party, and no representations, promises, or inducements shall be binding upon Sealy or Licensee except as herein stated.

In Witness Whereof, the parties hereto each acting through its duly authorized officers, have hereunto set their hands and affixed their seals, on this, the day and year first above written.

Sealy, Incorporated, (Seal), By: E. H. Bergmann,
President.

Attest:

J. R. Sommer, V. P.

Peerless Mattress Company, Inc., By: Mrs. J. V.
Moffitt, Sr., President.

Attest:

Jack V. Moffit, Secretary.

[fol. 1334E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1074

This Agreement, made and entered into this, the 15th day of May, 1952, by and between Sealy, Incorporated, a Delaware Corporation, hereinafter called "Sealy", party of the first part, and Sanitary Bedding Company a partnership consisting of Ross S. Rosenberg, Bernard M. S. Kegan, Rebecca R. Lichter hereinafter called "Licensee", party of the second part:

Witnesseth:

Whereas, Sealy is the owner of patents, trademarks, tradenames, copyrights, slogans, secret methods, processes, and specifications, for use in the design, manufacture and sale of mattresses, studio couches, sofa beds, bed springs, bedding, dual sleeping equipment, and similar products, and from time to time originates and develops additional patents, secret methods, processes, and specifications (which may or may not be copyrighted) for the design and manufacture of the above named products, and also originates additional trademarks, tradenames, copyrights, slogans, and methods for the sale of such products, and has extensively advertised the name "Sealy and its trademarks, tradenames, and slogans; and,

Whereas, Licensee desires to manufacture and sell to retail stores Sealy products within an exclusive territory under the terms and conditions hereinafter set forth, and to use Sealy's patents, trademarks, tradenames, copyrights, slogans, secret manufacturing methods, processes, and specifications; to use Sealy's methods for merchandising and selling, and to obtain the benefit of Sealy's advertising of its name, its trademarks, tradenames, copyrights, and slogans;

Now, Therefore, for and in consideration of the covenants and agreements from one party to the other, as hereinafter set forth, and of their prompt and punctual performance by each party, and of other valuable consideration, the receipt of which is hereby acknowledged, It Is Agreed:

I

Definitions

I:1. The term "Sealy products" is defined to include mattresses, including ensembles, studio couches, divans, [fol. 1335E] studio lounge beds, sofa beds, and any other upholstered furniture convertible to or usable as a bed, chairs matching the last four (4) mentioned items, bed springs, box springs, foundation units, pillows, cushions, comforts, similar and related articles, and any other items as may, from time to time, be developed, designed, manufactured, or the specifications for the manufacture of which may be issued by Sealy, or which may be authorized by Sealy for manufacture and sale by its licensees. Under Sealy's supervision, and shall also include any and all items sold under any trademark, tradename, or slogan of Sealy or "Crestline". Except as specifically hereinafter provided in this contract, the term "Sealy products" shall include both the Sealy and Crestline manufactured products.

I:2. Sealy trademarks, tradenames, or slogans, whether or not registered, are defined as "Crestline", "Sealy Rest", "Sealy Tuftless", "Cotton Boll", "Truease", "Texlan", "Luxel", "Sunspun", "Durolife", "Posture Pillow", "Fast-Asleep", "Sleep Charm", "Natural Rest", "Air Vent", "Sleep Joy", "Sealy Kraft", "Airlite", "Enchanted Nights", "Airwoven", "Vital Third", "A Giant Pillow for the Body", "Sleeping on a Sealy is like Sleeping on a Cloud", "Prize Winner", "Good Homekeeper", "Miracle Mesh", "Golden Sleep", "Posturepedic", "Firm-O-Rest", "Sleep Lounge", and such other trademarks, tradenames, and slogans as Sealy may hereafter, from time to time, use and disclose to Licensee. Licensee may be permitted by the Board of Directors of Sealy, Incorporated, to use any other trademark, tradename, or slogan which does not infringe upon any trademark, tradename, or slogan used by Sealy, and if permission is granted by Sealy to use such trademark, tradename, or slogan, such trademark, tradename, or slogan shall become the property of Sealy.

I:3. "Territory" is defined as the area, more fully

described in II:2 below, in which the Licensee shall have the right, subject to the covenants and conditions hereinafter set forth, to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and for such purpose only, to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications.

I:4. "Licensee" is defined as the person, firm, or corporation to whom Sealy allocates a specified area in which such person, firm, or corporation only shall manufacture and sell Sealy products to retail stores, hospitals, and hotels, and for such purpose shall have the exclusive right to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, and use Sealy labels.

I:5. "Specifications" are defined to mean the written instructions or directions issued from time to time by Sealy specifying the type, quality, and quantity of materials to be used, and the methods and processes to be followed in the manufacture and fabrication of Sealy products.

II

Licensee's Territory and Term of Contract and Renewal

II:1. Party of the second part is named the sole and exclusive Licensee under this agreement, and shall have the sole right to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and use Sealy labels affixed to such products in the territory described in Paragraph II:2 below for the term of this license or any extension thereof.

II:2. The territory in which Licensee shall have the sole right to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, is as follows:

Entire State of Minnesota. Entire State of North Dakota. Following counties in Wisconsin: Barron, Buffalo, Burnett, Douglas, Dunn, Pepin, Pierce, Polk, Saint Croix, Washburn. Following counties in South Dakota:

Aurora, Beadle, Bennett, Brookings, Brown, Brule, Buffalo, Campbell, Clark, Codington, Corson, Davison, Day, Deuel, Dewey, Edmunds, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Hughes, Hyde, Jackson, Jerauld, Jones, Kingsbury, Lake, Lyman, McCook, McPherson, Marshall, Mellette, Miner, Minnehaha, Moody, Potter, Roberts, Sanborn, Spink, Armstrong, Stanley, Todd, Tripp, Walworth, Washabaugh, Ziebach.

[fol. 1337E] II:3. The term of this contract shall be for 5 years beginning the 1st day of January, 1952, and ending the 31st day of December, 1956, unless sooner terminated by the agreement of the parties or under the provisions of this License.

II:4. If Licensee shall well and truly perform each and every covenant of this contract during the full time thereof, including, without intending to limit the generality of the foregoing, specific compliance with the provisions of Sec. IV :3 below, and time being of the essence, then Licensee shall be entitled to one renewal of this license agreement for a period of five (5) years from the date of the expiration hereof, provided that Sealy shall have the right to increase the minimum royalty to be paid by Licensee during such renewal period, by a maximum of twenty-five (25) percent of the minimum royalty provided in Paragraph V:1(b) below. Notice of the exercise of this right of renewal shall be given in writing by the Licensee to Sealy at least six (6) months prior to the expiration date of this contract.

II:5. If the Licensee shall well and truly perform during the full period of this contract and/or the any renewal thereof, each and every covenant of this contract and of the renewal contract, including specifically, but without intending to limit the generalities of the foregoing, specific compliance with the provisions of Paragraph IV:3 below, and time being of the essence, then the renewal of this license shall remain in full force and effect so long as the Licensee shall continue to well and truly perform each and every covenant of this Agreement and of the renewal thereof; provided that Sealy shall have the right at the beginning of each five (5)

year period after the expiration of the first renewal of this license, to increase the minimum royalty to be paid by the Licensee thereafter, a maximum of twenty-five (25) percent of the amount of minimum royalty being paid by the Licensee during the next preceding five (5) year period.

III

Sealy's Covenants and Agreements

Sealy covenants and agree while this contract is in full force and effect:

[fol. 1338E] III:1. To permit Licensee, in the manufacture and sale of Sealy products, the use of Sealy patents, copyrights, trademarks, tradenames, slogans, exclusive rights, and licenses in the manner and form prescribed by Sealy.

III:2. To furnish Licensee true and correct copies of specifications currently used in the manufacture of Sealy products. Such specifications may be changed at any time by Sealy, and, when changed, written notice thereof together with the new specifications shall be furnished by Sealy to Licensee, and after thirty (30) days from the date of such notice shall become the specifications to which all Sealy products thereafter manufactured by Licensee must conform. The Board of Directors and/or President are authorized to grant Licensee sufficient time beyond the thirty (30) day period, hereinbefore provided, within which to dispose of inventories rendered obsolete by changes in specifications.

III:3. To furnish Licensee full information concerning its methods and processes of manufacture and sale. Such methods and processes may be changed, from time to time, by Sealy, and, when changed, written notice thereof, together with the new methods and processes shall be furnished by Sealy to Licensee, and after thirty (30) days from the date of such notice shall become the methods and processes to which all Sealy products thereafter manufactured by Licensee must conform. If any of such processes or methods, furnished by Sealy to Licensee, should in any wise violate any of the laws, rules, or regulations of the United States Government or any of its

Agencies, or the laws of the State in which Licensee manufactures or sells, then such processes or methods shall not be binding upon or enforceable against Licensee. The Board of Directors and/or President are authorized to grant Licensee sufficient time beyond the thirty (30) day period, hereinbefore provided, within which to dispose of inventories rendered obsolete by changes of process or methods of manufacture.

III:4. To defend at Sealy's expense any and all suits against Licensee for patent or trademark infringement because of Licensees' use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the manufacture of Sealy products, provided:

[fol. 1339E] (a) That the said Sealy products were manufactured at the time of the alleged infringement in accordance with Sealy specifications.

(b) As conditions precedent for such protection Licensee shall give notice:

(1) By registered mail to Sealy at its office in Chicago, Illinois, promptly, of any claim of infringement against Licensee because of Licensee's use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the manufacture of Sealy products, and in such notice shall advise Sealy all facts concerning such alleged claim for infringement; and,

(2) In the event any suit should be filed against Licensee based upon such alleged infringement, to forward to Sealy at its office in Chicago, Illinois the complaint, petition, or copy thereof, in said cause within two (2) days after service of said complaint or petition upon Licensee.

III:5. Sealy shall in no event incur any liability because of any claim, demand, or suit for infringement until such liability shall have been finally determined in a court of last resort after actual trial, and unless Sealy shall have been given the notice, as herein provided, of the filing of any claim, demand, or suit against Licensee for such alleged infringement.

III:6. Sealy will not manufacture nor sell, nor will it

without the consent of Licensee contract with or permit any other person, partnership, association, or corporation, to manufacture or sell Sealy products within the territory allocated to Licensee so long as this contract is in force; and Sealy will prevent, insofar as it is legally permitted, the manufacture, sale or shipment of Sealy products in said territory by any other person, partnership, association, or corporation, except that Sealy, directly or through subsidiary, or by contract with another manufacturer shall have the right to manufacture and sell bed springs, sofa and divan springs, and springs of all types within the territory covered by this contract to Licensee, and if, for any reason, the Licensee in the territory [fol. 1340E] does not desire to purchase all of such springs offered by Sealy in such territory; then to sell such springs to other persons, firms, or corporations in the territory covered by this contract, but not as Sealy products nor bearing Sealy labels.

III:7. Sealy will pay to Licensee as liquidated damages Ten (\$10.00) and No/100 Dollars for each Sealy product sold or shipped by Sealy into Licensee's exclusive territory; and Sealy will pay Ten (\$10.00) and No/100 Dollars, less the cost of collection for each such article sold or shipped in Licensee's exclusive territory by any person, partnership, association, or corporation having in force a contract with Sealy identical with or similar to this contract; provided that Sealy has theretofore collected said Ten (\$10.00) and No/100 Dollars for each such article from said person, partnership, association, or corporation manufacturing or selling such articles. But this provision shall not apply to the sale of Furniture Market Samples of Sealy, Incorporated, or to those products excepted in Paragraph III:6 hereof.

III:9. To use and expend at least fifty (50) percent use the term "Sealy" in its corporate or business name, but only in connection with the manufacture and sale of Sealy products and not for the manufacture and sale of any other products.

III:9. To use and expend at least fifty (50) percent of the amount paid it as royalties under Paragraph V:1 and V:3 of this contract and other similar contracts which Sealy has with its Licensees, for national and other ad-

vertising, merchandising, and general sales promotion of Sealy products throughout the United States, it being understood that the amount expended by Sealy for (a) salaries, office, and administrative costs, and (b) for payments to Licensees for Sealy's share of local advertisement in Licensee's territory, are considered a part of such advertising, merchandising, and sales promotion expense. The type of advertising, merchandising and sales promotion, and the amount expended for each of such items and when such expenditure shall be made, shall be determined by Sealy Board of Directors.

IV

Licensee's Covenants and Agreements

Licensee covenants and agrees:

[fol. 1341E] IV:1. To manufacture, during the term of this Agreement or any renewal thereof; at Licensee's own expense, Sealy products, in the designated territory, strictly in accordance with Sealy specifications, patents, processes; exclusive rights, and licenses now owned or controlled, or hereafter acquired by Sealy, and not to use or utilize any of such specifications, patents, processes, exclusive rights, and licenses in the manufacture of any other products; and to comply with changes made by Sealy in the specifications of all Sealy products or in the methods or process of their manufacture within the time or extension thereof, as provided in Paragraphs III:2 and III:3 hereof; and to sell Sealy products to retail stores and others subject to the provisions of this License.

IV:2. To use exclusively in the manufacture of Sealy products and for no other purpose, all items and/or supplies determined by Sealy to be exclusive for Sealy products, whether supplied by or procured through Sealy or purchased by the Licensee from any other source.

IV:3. To maintain in the designated territory such facilities for the manufacture of all Sealy mattresses and box springs (exclusive of Crestline mattresses) as shall be deemed adequate by a two-thirds majority vote of Sealy's Board of Directors; and to maintain such selling force for

the sale of Sealy products as are manufactured by Licensee, in constant and continuous effort in the designated territory, as Sealy by a two-thirds majority vote of its Board of Directors shall deem adequate. Failure of Licensee to maintain such adequate manufacturing facilities and selling force shall be a violation of this License, and Sealy by a two-thirds majority vote of its Board of Directors shall have the right forthwith to terminate same by written notice addressed to Licensee at its last known place of business.

IV:4. That Licensee shall not:

(a) Manufacture, sell, or deliver within Licensee's exclusive territory any products competitive to Sealy which bear labels, trademarks, tradenames, or slogans of any nationally advertised competitor of Sealy.

(b) Sell or deliver any Sealy products outside of Licensee's exclusive territory, nor sell nor deliver Sealy products if Licensee knows or has reason to [fol. 1342E] believe that the purchaser intends to resell or deliver the same for resale out of Licensee's exclusive territory; nor

(c) Sell or deliver any Sealy products to wholesalers, distributors, or mail order houses without first having obtained from Sealy permission to make such sale.

IV:5. To advertise Sealy products by means embodying and employing Sealy trademarks, tradenames, copyrights, slogans, or designs; and, upon request, either oral or in writing, by Sealy, to forthwith discontinue any advertising objectionable to Sealy; not to advertise nor represent that any of Licensee's products other than Sealy products are manufactured or sold by the makers of Sealy products unless so authorized by the President of Sealy or its Board of Directors; and if so authorized, to discontinue said form of advertising immediately upon request of Sealy or its President; not to advertise nor represent a product as a Sealy product unless it is a Sealy product manufactured in accordance with the provisions of this contract and the specifications (pertaining to such product) issued by Sealy; not to use the Sealy name in connection

with Licensee's advertisement or sales other than in the advertisement and sale of Sealy products; to use letterheads, billheads, invoices, envelopes, business cards, bearing the name "Sealy" in the transaction of business involving Sealy products; not to use Licensee's own name or corporate name (other than "Sealy") or any private brand, label or slogan, letterheads, billheads, or invoices in connection with the advertisement or sale of Sealy products; in no manner to trade on the prestige of Sealy nor to make use of the fact that Licensee is a manufacturer of Sealy merchandise and a Sealy Licensee, except in the sale of Sealy products; it being expressly agreed that Licensee shall not use or trade upon the Sealy name, prestige, nor the fact that the party of the second part is a Sealy Licensee except in the territory covered by this contract and in connection with the sale of Sealy products.

IV:6. To permit Sealy to exercise supervision and control over the manufacture, advertising, and sale by Licensee of Sealy products, so as to insure Licensee's conforming to Sealy's specifications, processes, and methods of manufacture and sale of Sealy products; and uniformity [fol. 1343E] in said products; and in order to better enable Sealy to exercise such supervision and control, Licensee agrees to furnish Sealy specimens of Manufactured products and samples of material used in manufacturing, and to afford representatives of Sealy, including Sealy's engineer, access at reasonable hours to its plant, warehouse and records appertaining to the manufacture and sale of Sealy products. Sealy's engineer shall visit Licensee's plant at least once each year for a period not exceeding six (6) days, the expense for the engineer's service, including his compensation, to be paid for by Licensee. If Licensee requests an additional visit or visits by Sealy's engineer during any yearly period of this License (beginning January 1st of each year), the expense of such engineer, as hereinafter provided, shall be paid by Licensee; otherwise, no charge shall be made upon Licensee for such additional visit or visits by Sealy's engineer.

IV:7. To keep detailed, accurate, and complete records of all Sealy products and all other products of like kind manufactured by Licensee during each month in Licensee's

exclusive territory; and to afford to Sealy and its representatives access, at reasonable hours, to all of its records for the purpose of inspection, copy, or audit of said records; and to send to Sealy on or before the 15th day of each month a true and complete report showing the quantity of all products subject to royalty payments manufactured and sold by Licensee during the preceding month.

IV:8. To affix to all Sealy products sold and manufactured and/or sold, and/or shipped, in Licensee's territory, the form of label and/or trademark, or tradename, or slogan, as prescribed by Sealy; to place on Sealy products in the form and at the position thereon, as prescribed by Sealy, such other or supplementary labels, trademarks, tradenames, or slogans as Sealy may, from time to time, determine; and not to affix or attach a label containing the name "Sealy" in any form, nor any of Sealy's trademarks, tradenames, slogans or labels to a product other than one manufactured by Licensee in accordance with this contract and the specifications of Sealy issued hereunder.

IV:9. To purchase from Sealy and to pay Sealy therefor [fol. 1344E] the labels designated by Sealy to be affixed to Sealy products.

IV:10. If, during the term of this contract, Licensee has obtained Sealy's consent to use the term "Sealy" in its corporate or business name, Licensee will, upon the termination of this contract for any reason whatsoever, immediately eliminate from its corporate or business name the term "Sealy", and upon Licensee's failure to do so, Sealy shall have the right to obtain specific relief by injunction in accordance with this provision, but such right shall be cumulative and not exclusive of any other right which Sealy may have for Licensee's breach of this provision of the contract.

IV:11. That Sealy's patents, copyrights, trademarks, tradenames, slogans, and processes are valid and owned by Sealy, and that Licensee will not itself commit, aid, abet, nor assist, any other person, partnership, association, or corporation in committing any act which might in any wise infringe on any of said patents, copyrights, trademarks, tradenames, slogans, or processes.

IV:12. During the term or any renewal hereof, to make

no disclosure, except to its own employees using the name, of any manufacturing process or formula, or machinery used for the manufacture of Sealy products or Sealy's methods of sale; and, in the manufacture of Sealy products or of Sealy's methods of sale, after the termination of this License, to make no disclosure of any such manufacturing process or formula or of the machinery used.

IV:13. Licensee will not, during the term of this License, do any act or pursue any course of action either in manufacturing, selling, merchandising, or advertising Sealy products, or in the manufacture, sale, merchandising, or advertising of any other products manufactured by Licensee, which will be detrimental or injurious to Sealy, or which will, in any way, damage, injure, deteriorate, or otherwise harmfully affect the value of any of Sealy's trademarks, tradenames, slogans, patents, processes, or which will adversely affect Sealy, its trademarks, tradenames, slogans, patents, or processes, or the products of Sealy manufactured under such processes, or merchandised, advertised, or sold under any of Sealy's trademarks, tradenames, slogans, patents, or processes. The determination of whether any such act or series of acts shall or may have such harmful, injurious, deleterious, or adverse [fol. 1345E] effect, shall rest in the sole determination of the Board of Directors of Sealy, and upon such Board's finding that Licensee has been guilty of any such act or acts, the Board may forthwith terminate the License, but said Board shall have the sole discretion to determine that the Licensee may continue, upon proof satisfactory to the Board, that the act or acts of Licensee complained of have been discontinued or that the harmful effects have either been eradicated or were of such nature as to have no permanent ill effect upon Sealy, its products, trademarks, tradenames, slogans, patents, or processes.

IV:14. To comply with such reasonable rules and regulations not inconsistent with the terms of this License as Sealy may, from time to time, establish for the manufacture and sale of Sealy products and the operation of Licensee's business as a Sealy Licensee.

IV:15. To perform in good faith each and every covenant of this agreement.

V-

Royalty and Charges to be Paid by Licensee Under this Contract

V:1. As a consideration for its exclusive right to manufacture and sell Sealy products and to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, Licensee shall pay to Sealy the following royalty:

(a) During the term of this contract in monthly installments on the 15th day of each succeeding month, three (3) percent of all of Licensee's gross sales made during the preceding month up to One Million (\$1,000,000.00) and No/100 Dollars;

(b) When the aggregate of the monthly sales in any one year beginning January 1st, 1952, have equalled One Million (\$1,000,000.00) and No/100 Dollars, then two (2) percent of such gross sales each month from One Million (\$1,000,000.00) and No/100 Dollars to Two Million (\$2,000,000.00) and No/100 Dollars:

(c) When the aggregate of the monthly sales in any one year beginning January 1st, 1952, have equalled Two Million (\$2,000,000.00) and No/100 Dollars, then one (1) percent of such gross sales each month from Two Million (\$2,000,000.00) and No/100 Dollars to Three Million (\$3,000,000.00) and No/100 Dollars;

[fol. 1346E] (d) When the aggregate of such monthly sales in any one year beginning January 1st, 1952, have reached Three Million (\$3,000,000.00) and No/100 Dollars, then two (2) percent of such gross sales each month above Three Million (\$3,000,000.00) and No/100 Dollars.

(e) Such monthly royalty or percentage on gross sales shall be not less than one-twelfth (1/12) of 3% of:

(1) 70% of the sales par of Licensee for the calendar year 1951, during the first year of this contract;

(2) 80% of the sales par of Licensee for the calendar year 1952, during the second year of this contract;

(3) 90% of the sales par of Licensee for the year 1953, during the third year of this contract;

(4) After the third year, 90% of the sales par of Licensee for the preceding year.

For the purposes of this section "sales par" is to be determined by Sealy in accordance with the plan heretofore used by Sealy for the year 1951, which for the year 1951 is agreed to be \$480,616.00. Notice of the sales par for each year after 1951 and of the minimum monthly royalty due by Licensee thereafter shall be given by Sealy to Licensee at least 40 days prior to August 15th of each year.

(f) Should Licensee fail or refuse to pay promptly when due the monthly royalty or percentage as hereinbefore set out, or should Licensee fail or refuse to pay promptly when due its annual royalty or percentage of gross sales, or should Licensee fail or refuse to pay other indebtedness that may be due Sealy or its sources of supply promptly when due and should any one of said defaults continue for a period of 15 days beyond the due date, then Sealy, at its option, shall have the right to cancel this license forthwith, and such right shall be cumulative of any other right or remedy which Sealy may have to enforce the same and of any indebtedness that may be due it or its sources of supply.

(g) Such royalty shall be paid upon sales of Sealy products, or other like products, except sales of Licensee's manufactured products other than Sealy products [fol. 1347E] to bona fide jobbers and mail order houses approved by Sealy or to a United States Governmental Agency or the Agency of any State or political subdivision thereof.

(h) The term "gross sales" as used herein shall not include sales of any class of manufactured products herein defined as "New Sealy Products" for which

Sealy has not issued specifications and processes at the time this Licensee Agreement dated the 15th day of May, 1952, is made, but of thereafter and during the term of this License Agreement Sealy should issue specifications and processes for the manufacture of any new class of manufactured products (herein defined as "New Sealy Products") which Licensee then manufactures, Licensee shall pay royalty on its gross sales of such "New Sealy Products" and any like products manufactured by Licensee only in the event Licensee uses the Sealy specifications and/or processes and/or methods of merchandising or selling such new class of Sealy manufactured products herein defined as "New Sealy Products".

(i) The term "New Sealy Products" shall include any products designed, developed, or authorized for manufacture by Sealy, or the specifications for the manufacture or design of which are given by Sealy, subsequent to the date of this contract, and which products were not, upon the date of this contract, either manufactured, designed, or authorized for manufacture or design, or for which no specifications for the manufacture, design, or fabrication had been issued, by Sealy on or before the date of this License.

(j) "Gross Sales" do not include P. M.'s, returns, allowances and freight allowed customers.

(k). The term "bona fide jobbers and mail order houses" does not include any retail store outlet operated directly or indirectly by the jobber or mail order house, and any sale of Licensee's manufactured product to a retail store outlet operated directly or indirectly by a bona fide jobber or by a mail order house shall be included in Licensee's gross sales upon which the royalty, as hereinbefore provided, is to be paid by Licensee.

V:2. Licensee agrees to pay for all advertising material and other displays furnished by Sealy, or by sources designated by Sealy, upon the order of Licensee

[fol. 1348E] within thirty (30) days from the date when furnished it is, however, understood and agreed that Sealy, without order of the Licensee, may ship advertising materials and displays which Sealy deems necessary for the promotion and welfare of its business to Licensee not exceeding the sum of Four Hundred Fifty (\$450.) and No/100 Dollars per annum, and such items so shipped shall be paid for Licensee within thirty (30) days from the date of shipment.

V:3. Licensee agrees to pay for all material, ticking, cotton, and supplies furnished Licensee by Sealy or Sealy's sources of supply at prices and upon terms agreed upon between Sealy and Licensee, but Sealy shall be under no obligation whatsoever to furnish Licensee any material, ticking, cotton, innersprings, or other supplies.

V:4. Licensee agrees to pay to Sealy on demand the sum of Ten (\$10.00) and No/100 Dollars: (a) for each Sealy product manufactured, sold or delivered by Licensee outside of Licensee's exclusive territory; (b) for each Sealy product sold if Licensee knows or should have known that the purchaser intends to resell or deliver the same for resale outside of Licensee's exclusive territory; and, (c) for each Sealy product sold or delivered to any mail order house or jobber without Sealy's written consent. Licensee further agrees to pay to Sealy on demand the full retail price of any Sealy Product manufactured or sold by Licensee to any purchaser, on the production of evidence satisfactory to Sealy that such product was not made in accordance with the Sealy specifications, or that such product was mislabeled or misbranded, or that inferior materials or workmanship were used in its manufacture; and this Agreement shall remain in full force and effect after the termination of this contract.

V:5. Subject to the provisions of Paragraph IV:6 above, Licensee agrees to pay to Sealy charges for the services rendered Licensee by Sealy's engineer at a per diem rate fixed by the Board of Directors for such service, which shall include the traveling and hotel expenses of the engineer.

VI

Covenants of Both Parties .

Both parties hereto covenant and agree:

VI:1. That within ninety (90) days from any termination of this contract, Sealy shall have the right to repurchase at Licensee's original cost all or any of the following:

[fol. 1349E] (a) The whole or any part of Sealy labels purchased by Licensee;

(b) The whole or any part of the manufactured or partially manufactured Sealy products;

(c) Raw materials, or supplies, purchased by Licensee for the manufacture of Sealy products.

VI:2. In the event Licensee becomes insolvent, or a petition is filed by or against Licensee under the provisions of the Federal Bankruptcy Act (which shall include proceedings for reorganization, adjustments with creditors, or any other form of relief under the Bankruptcy Act of the United States, or if Licensee suffers or permits a Receiver to be appointed in any insolvency proceedings in a State or Federal Court, or makes an assignment of the whole or any portion of its assets for the benefit of its creditors, or in the event Licensee suspends or discontinues its business operations for a period of three (3) months, then upon the happening of either one of said events this contract shall terminate and be at an end.

VI:3(a). Except as otherwise herein provided, if Licensee defaults in the performance or violates any provision of this Contract, Sealy shall give to the Licensee thirty (30) days written notice of its intention to terminate this Contract by reason of such violation or default; and Licensee shall be given an opportunity to be heard with respect to such default or violation prior to action being taken thereon by Sealy's Board of Directors. If such default or violation is, to the satisfaction of two-thirds

(2/3) of Sealy's Board of Directors, remedied during such thirty (30) day period, beginning with the written notice given by Sealy, then this Contract shall remain of full force and effect; but if such default or violation is not so remedied to the satisfaction of a two-thirds (2/3) majority vote of Sealy's Board of Directors, then this contract shall be at an end at the expiration of such thirty (30) day period. The determination of whether or not such default or violation is remedied shall rest in the exclusive discretion and control of the two-thirds (2/3) majority of Sealy's Board of Directors.

VI:3(b). Should Licensee fail or refuse within the time and in the manner provided in Paragraph VI:3(a) above to remedy any such default or violation and thus cause Sealy to declare this contract to be at an end, then Licensee agrees to pay Licensor as liquidated damages [fol. 1350E] for such breach a sum equal to the amount of royalty paid by Licensee during the 12 months next preceding the date of the termination of this contract.

VI:3(c). Should Licensee default in the performance or violate any provisions of this contract, Licensee must give thirty (30) days written notice of its intention to terminate this contract by reason of such violation or default and if such default or violation is remedied during such thirty (30) day period, then this contract shall remain of full force and effect, and if not so remedied, then this contract shall be at an end at the expiration of such thirty (30) day period.

VI:4(a). Licensee may voluntarily terminate this contract by (1) giving Sealy two (2) months written notice of its intention so to terminate, and (2) Licensee shall pay to Sealy as consideration for its release from this contract a sum equal to twelve (12) months' minimum royalty. Upon the giving of such notice by Licensee, and the payment of such sum, the contract shall be at an end at the expiration of the two (2) months' period, beginning with the date of the written notice herein provided for.

VI:4(b). In the event Licensee voluntarily or involuntarily suspends or discontinues its business operations for a period of three (3) months, Sealy shall have the right to recover as liquidated damages for such breach a sum

equal to the amount of royalty paid by Licensee during the twelve (12) months next preceding the date when Licensee began the suspension or discontinuance of its business, or a sum equal to twelve (12) months' minimum royalty, as provided in this contract, whichever is greater.

VI:5(a). After the termination of this contract for any reason, Licensee agrees that it will not in the manufacture, sale, or advertising of any of its products use the name "Sealy" or any Sealy patents, secret methods, specifications, or processes which Licensee has at any time used in the manufacture, sale, and advertising of Sealy products.

VI:5(b). If, after having received notice from Sealy of the termination of this License for any reason, Licensee shall continue to use the name "Sealy", or shall use any Sealy patents, secret methods, specifications, or processes in the manufacture, sale, or advertising of its products, [fol. 1351E] or represent that it is a Licensee of Sealy, Sealy shall, in addition to any other remedy provided by law or in equity be entitled to recover from the Licensee as liquidated damages a sum equal to three (3) times the amount of minimum monthly royalty called for in V:1(a) of this contract for each month or part thereof in which Licensee shall use the name "Sealy" or shall use any Sealy patents, secret methods, specifications, or processes in the manufacture, sale, or advertising of its products, or represent that it is a Licensee of Sealy.

VI:6. Failure of Sealy to act upon breach or violation of this contract, or to notify Licensee of any breach or violation of this contract, shall not constitute a waiver of any such breach or violation or if Sealy's right to terminate this contract at a later date because of such breach or violation.

VI:7. This contract is a personal contract between the parties hereto, and may not be assigned, nor may any of the rights thereunder be transferred in any manner by Licensee without Sealy's written consent; and such consent must be procured in the event Licensee is a corporation, and there is any change in the ownership of stock therein whereby the voting control of the corporation is vested in persons other than those holding such voting control therein as of the date of this contract, provided that there shall

be deemed to be no change in the voting control of the corporation Licensee in the event such voting control is exercised by the Executors or Administrators of a deceased stockholder or stockholders, or by a Trustee or Trustees under a testamentary or inter vivos trust executed by a stockholder or stockholders for the benefit of relatives within the second degree.

VI:8. That Licensee has no authority to bind Sealy upon any contract or obligation whatsoever. Nothing in this contract shall be construed as constituting Licensee as agent for Sealy for any purpose other than the appointment of Licensee to use and utilize the patents, trademarks, tradenames, slogans, processes, and specifications as provided in this License.

VI:9. Sealy shall not be liable to any person, firm, or corporation for any acts or omissions of Licensee or for unsatisfactory merchandise, made or sold by Licensee, or for any misrepresentations made by Licensee.

[fol. 1352E]

VII

All notices provided for to be given under this contract shall be in writing.

VIII

This contract shall be separable, and if any portion hereof shall be held invalid for any reason, the remainder shall not thereby be invalidated but shall remain in full force and effect.

IX

Except where Sealy's Board of Directors is specifically required to act under any provision of this contract, the term "Sealy's Board of Directors" shall be deemed to include the whole Board of Directors or the Executive Committee thereof.

X

This contract shall be governed by the laws of the State of Illinois, and shall not become binding upon or effective until a copy thereof, executed by Licensee, shall be received by Sealy at its office in Chicago, Illinois.

XI

This contract constitutes the sole and entire agreement between Sealy and Licensee, and no modification thereof shall be binding unless attached hereto and signed by each party, and no representations, promises, or inducements shall be binding upon Sealy or Licensee except as herein stated.

In Witness Whereof, the parties hereto each acting through its duly authorized officers, have hereunto set their hands and affixed their seals, on this, the day and year first above written.

Sealy, Incorporated, (Seal), By: E. H. Bergmann,
President.

Attest:

R. G. Culp, Secretary.

Sanitary Bedding Company, By: Ron L. Romberg,
Partner.

Attest:

Bernard M. S. Kegan, Partner.

[fol. 1353E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1085

This Agreement, Made and entered into this, the 28 day of September, 1948, by and between Sealy, Incorporated, a Delaware corporation, hereinafter called "Sealy", party of the first part, and Schmitt & Henry Manufacturing Company, an Iowa corporation, one of whose tradenames is Sealy Mattress Company, of Des Moines, Iowa, hereinafter called "Licensee", party of the second part;

Witnesseth:

Whereas, Sealy is the owner of certain patents, trademarks, tradenames, copyrights, slogans, secret methods, processes, and specifications for the manufacture and sale of mattresses, studio couches, sofa beds, bed springs, bedding, and similar products, and, from time to time, does originate and develop patents, secret methods processes, and specifications (which may or may not be copyrighted) for the manufacture of the above enumerated products, and does originate trademarks, tradenames, copyrights, slogans, and methods for the sale of such products, and has extensively advertised the name "Sealy" and its trademarks, tradenames, and slogans; and,

Whereas, Licensee has heretofore held a License to manufacture and sell to retail stores Sealy products within an exclusive territory under the terms and conditions hereinafter set forth and to use Sealy's patents, trademarks, tradenames, copyrights, slogans, secret manufacturing methods, processes and specifications; to use Sealy's secret methods for merchandising and selling, and to obtain the benefit of Sealy's advertising of its name, its trademarks, tradenames, copyrights, and slogans; and

Whereas, Sealy and Licensee deem it in their best interests that party of the second part continue as Licensee of party of the first part;

Now, Therefore, for and in consideration of the covenants and agreements from one party to the other party, as here-

inafter set forth, and of their prompt and punctual performance by each party, and of other valuable consideration, the receipt of which is hereby acknowledged, It Is Agreed:

I

Definitions

I:1. The term "Sealy products" is defined as mattresses including ensembles, studio couches, divans, studio lounge beds, sofa beds, and any other upholstered furniture convertible to or usable as a bed, chairs matching the last four (4) mentioned items, bed springs, box springs, foundation units, pillows, cushions, comforts, similar and related articles, and such other items which are patented or the tradenames thereof registered. This definition of "Sealy products" shall include such manufactured articles known as "Sealy" or "Crestline" products which have affixed thereto Sealy or Crestline trademarks, tradenames, or slogans defined in Paragraph I:2 of this Article. Except as specifically hereinafter provided in this contract, the term "Sealy products" shall include both the Sealy and Crestline manufactured products.

I:2. Sealy trademarks, tradenames, or slogans, whether or not registered, are defined as "Crestline", "Sealy Rest", "Sealy Tuftless", "Cotton Boll", "Truease", "Texlan", "Luxel", "Supspun", "Durolife", "Posture Pillow", "Fast-Asleep", "Sleep Charm", "Natural Rest", "Air Vent", "Sleep Joy", "Sealy Kraft", "Airlite", "Enchanted Nights", "Airwoven", "Vital Third", "A Giant Pillow For The Body", "Sleeping on a Sealy is like Sleeping on a Cloud", "Prize Winner", and such other trademarks, tradenames, and slogans as Sealy may hereafter, from time to time, use and disclose to Licensee. Licensee may be permitted by the Board of Directors of Sealy, Incorporated, to use any other trademark, tradename, or slogan which does not infringe upon any trademark, tradename, or slogan used by Sealy, and if permission is granted by Sealy to use any such trademark, tradename, or slogan, such trademark, tradename, or slogan, shall become the property of Sealy.

[fol. 1354E] I:3. "Territory" is defined as the area in which the Licensee shall have the right, subject to the

covenants and conditions hereinafter set forth, to manufacture and sell Sealy products to retail stores, and for such purpose only to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications.

I:4. "Licensee" is defined as the person, firm, or corporation, to whom Sealy allocates a specified area in which such person, firm, or corporation only shall manufacture and sell Sealy products to retail stores, and for such purpose shall have the exclusive right to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, and use Sealy labels.

I.5. "Specifications" are defined as the type, quality, and quantity of materials which Sealy determines, from time to time, are to be used in the manufacture of "Sealy Products".

I:6. "Methods and Processes" are defined as Sealy's methods and processes of manufacture and sale, whether or not patented, and which are furnished by Sealy to its Licensees for the manufacture and sale of Sealy products.

I:7. "Contract" or "Agreement" means first renewal of original License Contract.

II

Licensee's Territory and Term of Contract and Renewal

II:1. Party of the second part is named the sole and exclusive Licensee under this Agreement, and shall have the sole right to manufacture and sell Sealy products to retail stores, hospitals, and hotels; and use Sealy labels affixed to such products in the territory described in Paragraph II:2 for the term of this License or any extension thereof.

II:2. The territory in which Licensee shall have the sole right to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications is, as follows: Entire State of Iowa. All counties in Eastern Nebraska—west to and including the following counties; Keyapaha, Brown, Blaine, Custer, Dawson, Gosper, Furnas. Following counties in State of South Dakota; Union, Clay, Yankton, Bon Homme, Charles Mix, Douglas, Gregory, Tripp, Mellette, Todd, Bennett, Washa-

baugh, Brule, Aurora, Davison, Hanson, McCook, Minnehaha, Hutchinson, Turner, Lincoln.

II:3. The term of this Contract shall be for five (5) years beginning the 2 day of January 1948, and ending the 1 day of January 1953, unless sooner terminated by the agreement of the parties or under the provisions of this License.

II:4. If Licensee shall well and truly perform during the full period of this Contract for five (5) years each and every covenant of this Contract, time being of the essence, and if Licensee's selling and manufacturing facilities and efforts are not during the period of this Contract deemed inadequate by a two-thirds majority vote of Sealy's Board of Directors, then this Contract shall remain in full force and effect so long as Licensee shall well and truly perform each and every covenant of this Contract, Sealy reserving the right at the beginning of each five (5) year period after the expiration of this Contract to increase the minimum royalty to be paid by Licensee a maximum of twenty-five (25) per cent of the amount of minimum royalty being paid by Licensee during the next preceding five (5) year period.

III

Sealy's Covenants and Agreements

Sealy covenants and agrees while this contract is in full force and effect:

III:1. To permit Licensee the use of Sealy patents, copyrights, trademarks, tradenames, slogans, exclusive rights, and licenses in the manner and form prescribed by Sealy in the manufacture and sale of Sealy products.

[fol. 1355E] III:2. To furnish Licensee true and correct copies of specifications presently used in the manufacture of Sealy products. Such specifications may be changed at any time by Sealy, and, when changed, written notice thereof together with the new specifications shall be furnished by Sealy to Licensee, and after thirty (30) days from the date of such notice shall become the specifications to which all Sealy products thereafter manufactured by Licensee must conform. The Board of Directors and/or President are authorized to grant Licensee sufficient time beyond the thirty (30) day period, hereinbefore provided, within which

to dispose of inventories rendered obsolete by changes in specifications.

III:3. To furnish Licensee full information concerning its methods and processes of manufacture and sale. Such methods and processes may be changed, from time to time, by Sealy, and, when changed, written notice thereof, together with the new methods and processes shall be furnished by Sealy to Licensee, and after thirty (30) days from the date of such notice shall become the methods and processes to which all Sealy products thereafter manufactured by Licensee must conform. If any of such processes or methods, furnished by Sealy to Licensee, should in any wise violate any of the laws, rules, or regulations of the United States Government or any of its Agencies, or the laws of the State in which Licensee manufactures or sells, then such processes or methods shall not be binding upon or enforceable against Licensee. The Board of Directors and/or President are authorized to grant Licensee sufficient time beyond the thirty (30) day period, hereinbefore provided, within which to dispose of inventories rendered obsolete by changes of process or methods of manufacture.

III:4. To defend at Sealy's expense any and all suits against Licensee for patent or trademark infringement because of Licensee's use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the manufacture of Sealy products, provided:

(a) That the said Sealy products are manufactured in accordance with Sealy specifications and processes of manufacture herein defined; and,

(b) As conditions precedent for such protection Licensee shall give notice:

(1) By registered mail to Sealy at its office in Chicago, Illinois, promptly, of any claim of infringement against Licensee because of Licensee's use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the manufacture of Sealy products, and in such notice shall advise Sealy all facts concerning such alleged claim for infringement; and,

(2) In the event any suit should be filed against Licensee based upon such alleged infringement, to for-

ward to Sealy at its office in Chicago, Illinois, the complaint, petition, or copy thereof, in said cause within two (2) days after service of said complaint or petition upon Licensee.

III:5. Sealy shall in no event incur any liability to Licensee because of any claim, demand, or suit for infringement until such liability shall have been finally determined in a court of last resort after actual trial, and unless Sealy shall have been given the notice, as herein provided, of the filing of any claim, demand, or suit against Licensee for such alleged infringement.

III:6. Sealy will not manufacture nor sell, nor will it without the consent of Licensee contract with or permit any other person, partnership, association, or corporation, to manufacture or sell Sealy products within the territory allocated to Licensee so long as this contract is in force; and Sealy will prevent, insofar as it is legally permitted, the manufacture, sale or shipment of Sealy products in said territory by any other person, partnership, association, or corporation, except that Sealy, directly or through subsidiary, or by contract with another manufacturer shall have the right to manufacture and sell bed springs, sofa and divan springs, and springs of all types within the territory covered by this contract to Licensee, and if, for any reason, the Licensee in the territory does not desire to purchase such springs, or any part thereof, then to sell such springs to other persons, firms, or corporations in the territory covered by this contract, but not as Sealy products nor bearing Sealy labels.

[fol. 1356E] III:7. Sealy will pay to Licensee as liquidated damages Ten (\$10.00) and 00/100 Dollars for each Sealy product sold or shipped by Sealy into Licensee's exclusive territory; and Sealy will pay Ten (\$10.00) and 00/100 Dollars, less the cost of collection for each such article sold or shipped in Licensee's exclusive territory by any person, partnership, association, or corporation having in force a contract with Sealy identical with or similar to this contract; provided that Sealy has theretofore collected said Ten (\$10.00) and 00/100 Dollars for each such article from said person, partnership, association, or corporation manufacturing or selling such articles. But this

provision shall not apply to the sale of Furniture Market Samples of Sealy, Incorporated, or to those products excepted in Paragraph III:6 hereof.

III:8. To permit Licensee, upon written request to use the term "Sealy" in its corporate or business name, but only in connection with the manufacture and sale of Sealy products and not for the manufacture and sale of any other products.

III:9. To use and expend at least fifty (50) per cent. of the amount paid it as royalties under Paragraph V:1 of this Contract and other similar contracts which Sealy has with its Licensees for national and other advertising, merchandising, and general sales promotion of Sealy products throughout the United States, it being understood that the amount expended by Sealy for (a) salary, office, and administrative costs, and (b) for payments to Licensees for Sealy's share of local advertisement in Licensee's territory, are considered a part of such advertising, merchandising, and sales promotion expense. The type of advertising, merchandising, and sales promotion, and the amount expended for each of such items and when such expenditure shall be made, shall be determined by Sealy's Board of Directors.

IV

Licensee's Covenants and Agreements

Licensee covenants and agrees:

IV:1. To manufacture, during the term of this agreement or any renewal thereof, at Licensee's own expense, Sealy product's in the designated territory, strictly in accordance with Sealy specifications, patents, processes, exclusive rights, and licenses now owned or controlled, or hereafter acquired by Sealy, and not to use or utilize any of such specifications, patents, processes, exclusive rights, and licenses in the manufacture of any other products; and to comply with changes made by Sealy in the specifications of all Sealy products or in the methods or process of their manufacture within the time or extension thereof, as provided in Paragraphs III:2 and III:3 hereof; and to sell Sealy products to retail stores and others subject to the provisions of this License.

IV:2. To use exclusively in the manufacture of Sealy products and for no other purpose, all items and/or supplies determined by Sealy to be exclusive for Sealy products, whether supplied by or procured through Sealy or purchased by the Licensee from any other source.

IV:3. To maintain in the designated territory such facilities for the manufacture of all Sealy mattresses and box springs (exclusive of Crestline mattresses) as shall be deemed adequate by a two-thirds majority vote of Sealy's Board of Directors; and to maintain such selling force for the sale of Sealy products as are manufactured by Licensee in constant and continuous effort in the designated territory as Sealy by a two-thirds majority vote of its Board of Directors shall deem adequate. Failure of Licensee to maintain such adequate manufacturing facilities and selling force shall be a violation of this License, and Sealy by a two-thirds majority vote of its Board of Directors shall have the right forthwith to terminate same by written notice addressed to Licensee at its last known place of business.

IV:4. That Licensee shall not:

(a) Manufacture, sell, or deliver with Licensee's exclusive territory any products competitive to Sealy which bear labels, trademarks, tradenames, or slogans, of any nationally advertised competitor of Sealy;

(b) Sell or deliver any Sealy products outside of Licensee's exclusive territory, not sell nor deliver Sealy products if Licensee knows or has reason to believe that the purchaser intends to resell or deliver the same for resale out of Licensee's exclusive territory; and

(c) Sell or deliver any Sealy products to wholesalers, distributors, or mail order houses without first having obtained from Sealy permission to make such sale.

[fol. 1357E] IV:5. To advertise Sealy products by means embodying and employing Sealy trademarks, tradenames, copyrights, slogans, or designs; and, upon request, either oral or in writing, by Sealy, to forthwith discontinue any advertising or form of advertisement in any newspaper, publication, or otherwise, which is objectionable to Sealy; not to advertise nor represent that any of Licensee's products other than Sealy products are manufactured or sold

by the makers of Sealy products unless so authorized by the President of Sealy or its Board of Directors; and if so authorized, to discontinue said form of advertising immediately upon request of Sealy or its President; not to advertise nor represent a product as a Sealy product unless it is a Sealy product manufactured in accordance with the provisions of this Contract; not to use the Sealy name in connection with Licensee's advertisement or sales other than in the advertisement and sale of Sealy products; to use letterheads, billheads, invoices, envelopes, business cards bearing the name "Sealy" in the transaction of business involving Sealy products; not to use Licensee's own name or corporate name (other than "Sealy") or any private brand, label, or slogan, letterheads, billheads, or invoices in connection with the advertisement or sale of Sealy products; and except in the sale of Sealy products within the territory covered by this License, Licensee will in no manner trade on the prestige of Sealy nor make use of the fact that Licensee is a manufacturer of Sealy merchandise and a Sealy Licensee; it being expressly agreed that Licensee shall not use or trade upon the Sealy name, prestige, nor the fact that the party of the second part is a Sealy Licensee except in the territory covered by this Contract and in connection with the sale of Sealy products; and it being expressly understood and agreed that a violation of this provision shall be a breach of this Contract, and shall give Sealy the right to terminate this Contract and License.

IV:6. To permit Sealy to exercise supervision and control over the manufacture, advertising, and sale by Licensee of Sealy products, so as to insure Licensee's conforming to Sealy's specifications, processes, and methods of manufacture and sale of Sealy products and uniformity in said products; and in order to better enable Sealy to exercise such supervision and control, Licensee agrees to furnish Sealy specimens of manufactured products, samples of material used in manufacturing, and to afford representatives of Sealy, including Sealy's engineer, access at reasonable hours to its plant, warehouse and records appertaining to the manufacture and sale of Sealy products. Sealy's engineers shall visit Licensee's plant at least once each year for a period not exceeding six (6) days, the expense for the engineer's service, including his compensation to be paid

for by Licensee. If Licensee requests an additional visit or visits by Sealy's engineer during any yearly period of this License (beginning January 1st of each year), the expense of such engineer, as hereinafter provided, shall be paid by Licensee; otherwise, no charge shall be made upon Licensee for such additional visit or visits by Sealy's engineer.

IV:7. To keep detailed, accurate, and complete records of all Sealy products and all other products in like kind manufactured by Licensee during each month in Licensee's exclusive territory; and to afford to Sealy and its representatives access, at reasonable hours, to all of its records for the purpose of inspection, copy, or audit of said records; and to send to Sealy on or before the 15th day of each month a true and complete report showing the quantity of all Sealy and like products manufactured and sold by Licensee during the preceding month.

IV:8. To affix to all Sealy products sold and manufactured, and/or sold and/or shipped in Licensee's territory, the form of label as prescribed by Sealy; to place on Sealy products in the form and at the position thereon, as prescribed by Sealy, such other or supplementary labels as Sealy may, from time to time, determine; and not to affix or attach a label containing the name "Sealy" in any form, nor Sealy's label to a product other than one manufactured by Licensee in accordance with this Contract.

IV:9. To purchase from Sealy and to pay Sealy therefor the labels designated by Sealy to be affixed to Sealy products.

IV:10. If, during the term of this Contract, Licensee has obtained Sealy's consent to use the term "Sealy" in its corporate or business name, Licensee will, upon the expiration of this Contract, either according to its terms or sooner terminated under its provisions, immediately eliminate from its corporate or business name the term "Sealy", and upon Licensee's failure to do so, Sealy shall have the right to obtain specific relief by injunction in accordance with this provision, but such right shall be cumulative and not exclusive of any other right which Sealy may have for Licensee's breach of this provision of this Contract.

[fol. 1358E] IV:11. That Sealy's patents, copyrights, trademarks, tradenames, slogans, and processes are valid

and owned by Sealy, and that Licensee will not, itself commit, aid, abet, nor assist, any other person, partnership, association, or corporation in committing any act which might in any wise infringe on any of said patents, copyrights, trademarks, tradenames, slogans, or processes.

IV:12. To make no disclosure, except to its own employees using the same, of any and all manufacturing processes and formulae, or machinery used for the manufacture of Sealy products and Sealy's methods of sale; and to make no disclosure of such manufacturing processes and formulae or the machinery used for the manufacture of Sealy products and Sealy's methods of sale after the termination of this License.

IV:13. Licensee will not, during the term of this License, do any act or pursue any course of action either in manufacturing, selling, merchandising, or advertising Sealy products; or in the manufacture, sale, merchandising, or advertising of any other products manufactured by Licensee, which will be detrimental or injurious to Sealy, or which will, in any way, damage, injure, deteriorate, or otherwise harmfully affect the value of any of Sealy's trademarks, tradenames, slogans, patents, processes, or which will adversely affect Sealy, its trademarks, tradenames, slogans, patents, or processes, or the products of Sealy manufactured under such processes, or merchandise, advertised, or sold under any of Sealy's trademarks, tradenames, slogans, patents, or processes. The determination of whether any such act or series of acts shall have such harmful, injurious, deleterious, or adverse effect, shall rest in the sole determination of the Board of Directors of Sealy, and upon such Board's finding that Licensee has been guilty of any such act or acts, the Board may forthwith terminate the License, but said Board shall have the sole discretion to determine that Licensee may continue upon its being satisfied that it would be to the interest of Sealy to permit such License to continue upon proof satisfactory to the Board that the act or acts complained of have been discontinued and that harmful effects have either been eradicated or were of such nature as to have no permanent ill effect upon Sealy, its products, trademarks, tradenames, slogans, patents, or processes.

IV:14. To comply with such reasonable rules and regula-

tions not inconsistent with the terms of this License which Sealy may, from time to time, establish for the manufacture and sale of Sealy products and the operation of Licensee's business as a Sealy Licensee.

IV:15. To perform in good faith each and every covenant of this agreement.

V

Royalty and Charges to be Paid By Licensee Under this Contract

V:1. As a consideration for its exclusive right to manufacture and sell Sealy products and to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, Licensee shall pay to Sealy the following royalty:

V:1(a) During the term of this Contract in monthly installments on the 15th day of each succeeding month three (3) per cent. of all of Licensee's gross sales made during the preceding month up to One Million (\$1,000,000.00) and 00/100 Dollars; and when the aggregate of the monthly sales in any one calendar year beginning January 1, 1948, have equalled One Million (\$1,000,000.00) and 00/100 Dollars, then two (2) per cent. of such gross sales from One Million (\$1,000,000.00) and 00/100 Dollars to Two Million (\$2,000,000.00) and 00/100 Dollars; and when the aggregate of such monthly sales in any one calendar year beginning January 1, 1948, equal Two Million (\$2,000,000.00) and 00/100 Dollars, then one (1) per cent. of such sales from Two Million (\$2,000,000.00) and 00/100 Dollars to Three Million (\$3,000,000.00) and 00/100 Dollars; and when the aggregate of such monthly sales in any one calendar year beginning January 1, 1948, have reached Three Million (\$3,000,000.00) and 00/100 Dollars, then two (2) per cent. on all sales above Three Million (\$3,000,000.00) and 00/100 Dollars; such percentage shall be of the gross sales within the licensed territory during each calendar year beginning January 1, 1948, and such royalty shall be paid upon sales of Sealy products or other like products, except sales of Licensee's manufactured products other than Sealy products to bona fide jobbers and mail order houses approved by Sealy or to a United States Govern-

mental Agency or the Agency of any State or political subdivision thereof, it being stipulated that such monthly royalty or percentage on gross sales shall be not less than the sum of Four Hundred (\$400.00) Dollars per month.

[fol. 1359E] It is further stipulated:

(a) That Licensee's gross sales do not include sales of any class of manufactured products herein defined as "New Sealy Products" for which Sealy has not issued specifications and processes at the time this License Agreement dated the 28 day of September, 1948, is made, and if thereafter and during the term of this License Agreement Sealy should issue specifications and processes for the manufacture of any new class of manufactured products (herein defined as "New Sealy Products") which Licensee then manufactures, Licensee shall pay royalty on its gross sales of such New Sealy Products and any like products manufactured by Licensee only in the event Licensee uses the Sealy specifications and/or processes and/or methods of merchandising or selling such new class of Sealy manufactured products herein defined as "New Sealy Products".

(b) The term "New Sealy Products" shall mean products other than the following: mattresses including ensembles, studio couches, divans, studio lounge beds, sofa beds, and any other upholstered furniture convertible to or usable as a bed, chairs matching the last four (4) mentioned items, bed springs, box springs, foundation units, pillows, cushions, comforts, similar and related articles, and such other items which are patented or the tradenames thereof registered.

(c) "Gross Sales" do not include P.M.'s, returns, allowances, and freight allowed customers.

(d) The term "bona fide jobbers and mail order houses" does not include any retail store outlet operated directly or indirectly by the jobber or mail order house, and any sale of Licensee's manufactured product to a retail store outlet operated directly or indirectly by a bona fide jobber or by a mail order house shall be included in Licensee's gross sales upon which the royalty, as hereinbefore provided, is to be paid by licensee.

V:2. Licensee agrees to pay for all advertising material and other displays furnished by Sealy, or, by sources designated by Sealy, upon the order of Licensee within thirty (30) days from the date when furnished. It is, however, understood and agreed that Sealy, without order of the Licensee may ship advertising materials and displays which Sealy deems necessary for the promotion and welfare of its business to Licensee not exceeding the sum of Four Hundred Fifty (\$450.00) and 00/100 Dollars per annum, and such items so shipped shall be paid for by Licensee within thirty (30) days from the date of shipment.

V:3. Licensee agrees to pay for all material, ticking, cotton, and supplies furnished Licensee by Sealy or Sealy's sources of supply at prices and upon terms agreed upon between Sealy and Licensee.

V:4. Licensee agrees to pay to Sealy on demand the sum of Ten (\$10.00) and 00/100 Dollars: (a) for each Sealy product manufactured, sold, or delivered by Licensee outside of Licensee's exclusive territory; (b) for each Sealy product sold if Licensee knows or should have known that the purchaser intends to resell or deliver the same for resale outside of Licensee's exclusive territory; and (c) for each Sealy product sold or delivered to any mail order house or jobber without Sealy's written consent. Licensee further agrees to pay to Sealy on demand the full retail price of any Sealy product manufactured or sold by Licensee to any purchaser, on the production of evidence satisfactory to Sealy that such product was not made in accordance with the Sealy specifications, or if such product was mislabeled or misbranded, or inferior materials or workmanship was used in its manufacture; and this agreement shall be of full force and effect after the termination of this Contract.

V:5. Licensee agrees to pay to Sealy charges for the services rendered Licensee by Sealy's engineer at a per diem rate fixed by the Board of Directors for such service, which shall include the traveling and hotel expenses of the engineer.

VI

Covenants of Both Parties

Both parties hereto covenant and agree:

VI:1. That within ninety (90) days from any termination of this Contract, Sealy shall have the right to repurchase at Licensee's original cost the whole or any part of Sealy labels purchased by Licensee, the whole or any part of the manufactured or partially manufactured Sealy products, raw materials, or supplies, purchased by Licensee for the manufacture of Sealy products.

[fol. 1360E] VI:2. In the event Licensee becomes insolvent, or a petition is filed by or against Licensee under the provisions of the Federal Bankruptcy Act (which shall include proceedings for reorganization, adjustments with creditors, or any other form of relief under the Bankruptcy Act of the United States), or if Licensee suffers or permits a Receiver to be appointed in any insolvency proceedings in a State or Federal Court, or makes an assignment of the whole or any portion of its assets for the benefit of its creditors, or in the event Licensee suspends or discontinues its business operations for a period of three (3) months, then upon the happening of either one of said events this Contract shall terminate and be at an end.

VI:3(a) Except as otherwise herein provided, if Licensee defaults in the performance or violates any provision of this contract, Sealy must give thirty (30) days' written notice of its intention to terminate this Contract by reason of such violation or default, and if such default or violation is remedied during such thirty (30) day period, then this Contract shall again be of full force and effect, and if not so remedied to the satisfaction of a two-thirds majority vote of Sealy's Board of Directors, then this Contract shall be at an end at the expiration of such thirty (30) day period. Licensee shall be given an opportunity to be heard with respect to such default or violation prior to action being taken thereon by Sealy's Board of Directors.

VI:3(b) Should Licensee fail or refuse within the time and in the manner provided in Paragraph VI:3(a) to remedy any such default or violation and thus cause Sealy

to declare this Contract to be at an end, then Licensee agrees to pay Licensor as liquidated damages for such breach a sum equal to the amount of royalty paid by Licensee during the twelve (12) months next preceding the date of the termination of this Contract.

VI:3(c) Should Licensor default in the performance or violate any provision of this Contract, Licensee must give thirty (30) days' written notice of its intention to terminate this Contract by reason of such violation or default, and if such default or violation is remedied during such thirty (30) day period, then this Contract shall again be of full force and effect, and if not so remedied, then this Contract shall be at an end at the expiration of such thirty (30) day period.

VI:4(a) Licensee may voluntarily terminate this Contract after giving Sealy two (2) months' notice of its intention so to terminate, and the Contract shall be at an end at the expiration of the two (2) months' period, and contemporaneously with the giving of such notice of termination, Licensee will pay to Sealy as consideration for its release from this Contract a sum equal to twelve (12) months' minimum royalty.

VI:4(b) In the event Licensee voluntarily or involuntarily suspends or discontinues its business operations for a period of three (3) months, Sealy shall have the right to recover as liquidated damages for such breach a sum equal to the amount of royalty paid by Licensee during the twelve (12) months next preceding the date when Licensee began the suspension or discontinuance of its business, or a sum equal to twelve (12) months' minimum royalty, as provided in this Contract, whichever is greater.

VI:5. After the termination of this Contract for any reason, Licensee agrees that it will not in the manufacture or sale of any of its products use any Sealy patents, secret methods, specifications, or processes which Licensee has at any time used in the manufacture or sale of Sealy products.

VI:6. Failure of Sealy to notify Licensee of any breach or violation of this Contract shall not constitute a waiver of any such breach or violation or of Sealy's right to terminate this Contract at a later date because of such breach or violation.

VI:7. This Contract is a personal contract between the parties hereto, and may not be assigned or any rights thereunder transferred in any manner by Licensee without Sealy's written consent; and such consent must be procured in the event Licensee is a corporation, and there is any change in the ownership of stock therein whereby the voting control of the corporation is vested in persons other than those holding such voting control therein as of the date of this Contract, except there shall be deemed no change in the voting control of the corporation Licensee in the event such voting control is exercised by the Executors or Administrators of a deceased stockholder or stockholders, or by a Trustee or Trustees under a testamentary or inter vivos trust executed by a stockholder or stockholders for the benefit of relatives within the second degree.

[fol. 1361E] VI:8. That Licensee has no authority to bind Sealy upon any contract or obligation whatsoever. Nothing in this Contract shall be construed as constituting Licensee as agent for Sealy for any purpose other than the appointment of Licensee to use and utilize the patents, trademarks, tradenames, slogans, processes, and specifications as provided in this License.

VI:9. Sealy shall not be liable to any person, firm, or corporation, for any acts or omissions of Licensee or for unsatisfactory merchandise, made or sold by Licensee, or for any misrepresentations made by Licensee.

VII

All notices provided for to be given under this Contract shall be in writing.

VIII

This Contract shall be separable, and if any portion hereof shall be held invalid for any reason, the remainder shall not thereby be invalidated but shall remain in full force and effect.

IX

Except where Sealy's Board of Directors is specifically required to act under any provision of this Contract, the term "Sealy's Board of Directors" shall be deemed to in-

clude the whole Board of Directors or the Executive Committee thereof.

X

This contract shall be governed by the laws of the State of Illinois, and shall not become binding upon or effective until a copy thereof, executed by Licensee, shall be received by Sealy at its offices in Chicago, Illinois.

In Witness Whereof, the parties hereto, each acting through its duly authorized officers, have hereunto set their hands and affixed their seals, on this the day and year first above written.

Sealy, Incorporated, (Seal), By: E. H. Bergmann,
President.

Attest:

W. J. Craig, Asst. Secretary.

Schmitt & Henry Manufacturing Company, (Seal),
By: H. B. Fouts, President.

Attest:

T. H. Mitchell, Secretary.

[fol. 1362E] File with Contract

This is an amendment to the License Agreement dated the 2 day of January, 1942; between Sealy, Incorporated, a Delaware corporation, therein called "Sealy," and Schmitt & Henry Mfg. Co. (a corporation) therein called the "Licensee," and is herewith entered into between Sealy, Incorporated, hereinafter called "Sealy," and Schmitt & Henry Mfg. Co. hereinafter called the "Licensee," this 28 day of October, 1947, becoming a part of the License Agreement, hereinbefore referred to, the consideration being the payment by each of the parties to the other the sum of One (\$1.00) Dollar and other valuable consideration, the receipt whereof is hereby acknowledged, and provides:

1

Licensee, or Schmitt & Henry Mfg. Co. and its stockholders, have heretofore purchased 20 shares of the capital stock of Sealy, Incorporated, at \$100 per share, and Licensee, or Schmitt & Henry Mfg. Co. and its stockholders, are now the owners of said shares of capital stock.

2

Licensee is about to purchase from Sealy, Incorporated, 8 shares of its capital stock at and for the sum of \$105.00 per share.

3

As a part of the consideration for the purchase of said shares of stock set forth in Paragraph (2) next above, Licensee agrees with Sealy that upon the termination of the License held by Licensee, Sealy shall have the right and option to purchase all of the shares of the capital stock of Sealy, Incorporated, owned by Licensee and/or any of its stockholders, in accordance with the following formula:

(a) If the License or any extension thereof shall expire, and Licensee at the date of expiration shall not be in default in the performance of any of the provisions of the License Agreement, Sealy shall within thirty (30) days from the date of expiration of the License or any extension

thereof pay for said shares the purchase price paid therefor by Licensee and/or its stockholders, and if Licensee and/or its stockholders at such time have a bona fide offer to sell the shares of stock at more than such original price paid therefor by Licensee and/or its stockholders, and shall exhibit to Sealy satisfactory evidence of such offer, Sealy must within thirty (30) days exercise its right and option to purchase such shares at the price offered Licensee and/or its stockholders; and if Sealy fails to exercise such option and right to purchase within thirty (30) days, then Licensee [fol. 1363E] and/or its stockholders shall have the right to sell such shares freely and without restraint from Sealy.

(b) In the event the License Agreement between Sealy and Licensee is terminated by reason of a failure or default by Licensee to perform promptly the covenants to be by the Licensee performed, then Sealy shall pay for such shares the price paid therefor by Licensee and/or its stockholders less any sums that may be due Sealy by reason of the failure or default of Licensee to perform the covenants of the License Agreement within thirty (30) days from the date when said License is terminated; and in the event Sealy shall fail to exercise its right and option to purchase the shares under the terms of this paragraph and make the payment due thereunder within thirty (30) days, then Licensee and/or its stockholders shall have the right to sell such shares freely and without restraint from Sealy.

4

Licensee and/or its stockholders shall not, at any time, sell any of the shares of the capital stock of Sealy, Incorporated owned by it or its stockholders without first notifying and furnishing to Sealy complete evidence of the offer or offers which it or its stockholders have received and the terms thereof, including the name and address of the offeror, and Sealy shall have an option for thirty (30) days from the date of such notice to purchase the shares of capital stock of Sealy, Incorporated on the same terms as those contained in the offer which Licensee and/or its stockholders have received.

5

Any sale or transfer of said shares by Licensee and/or its stockholders contrary to the terms hereinbefore set forth shall be null and void, and Sealy shall have the right to refuse the transfer of such shares on its books in the event the terms of the foregoing agreement have not been complied with by Licensee and/or its stockholders.

6

The certificates for the shares of the capital stock of Sealy, Incorporated now held by Licensee and/or its stockholders, and the certificates hereafter issued by Sealy, Incorporated shall have the following clause imprinted thereon: "Subject to the provisions of the License Agreement and any amendment thereto between Sealy, Incorporated and Schmitt & Henry Mfg. Co., Licensee, and the holder of this certificate and any transferee thereof shall be bound thereby."

[fol. 1364E] In Witness Whereof, Sealy, Incorporated and Schmitt & Henry Mfg. Co., Licensee, the parties acting through their duly authorized officers, have hereunto executed this amendment to the License Agreement hereinbefore referred to.

Sealy, Incorporated, (Seal). By: —, —.

Schmitt & Henry Mfg. Co., Licensee. By H. B. Fouts, Pres.

The undersigned stockholders of Schmitt & Henry Mfg. Co., the Licensee, have read the provisions of this amendment to the License Agreement between Sealy, Incorporated and Schmitt & Henry Mfg. Co., the Licensee, dated the 28 day of October, 1947, and herewith signify their acceptance of the provisions of this amendment to the License Agreement and agree to be bound thereby.

Harry N. Ryden, T. L. Mitchell, T. H. Johnson,
Stockholders of 11/30/47.

[fol. 1365E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1086

This Agreement, made and entered into this, the 1st day of September, 1954, by and between Sealy, Incorporated, a Delaware Corporation, hereinafter called "Sealy", party of the first part, and Brown Reliable Bedding Company, a corporation of Michigan, hereinafter called "Licensee", party of the second part:

Witnesseth:

Whereas, Sealy is the owner of patents, trademarks, tradenames, copyrights, slogans, secret methods, processes, and specifications, for use in the design, manufacture and sale of mattresses, studio couches, sofa beds, bed springs, bedding, dual sleeping equipment, and similar products, and from time to time originates and develops additional patents, secret methods, processes, and specifications (which may or may not be copyrighted) for the design and manufacture of the above named products, and also originates additional trademarks, tradenames, copyrights, slogans, and methods for the sale of such products, and has extensively advertised the name "Sealy" and its trademarks, tradenames, and slogans; and,

Whereas, Licensee desires to manufacture and sell to retail stores Sealy products within an exclusive territory under the terms and conditions hereinafter set forth, and to use Sealy's patents, trademarks, tradenames, copyrights, slogans, secret manufacturing methods, processes, and specifications; to use Sealy's methods for merchandising and selling, and to obtain the benefit of Sealy's advertising of its name, its trademarks, tradenames, copyrights, and slogans;

Now, Therefore, for and in consideration of the covenants and agreements from one party to the other party, as hereinafter set forth, and of their prompt and punctual performance by each party, and of other valuable consideration, the receipt of which is hereby acknowledged, It Is Agreed:

I

Definitions

I:1. The term "Sealy products" is defined to include mattresses, including ensembles, studio couches, divans, studio lounge beds, sofa beds, and any other upholstered [fol. 1366E] furniture convertible to or usable as a bed, chairs matching the last four (4) mentioned items, bed springs, box springs, foundations units, pillows, cushions, comforts, similar and related articles, and any other items as may, from time to time, be developed, designed, manufactured, or the specifications for the manufacture of which may be issued by Sealy, or which may be authorized by Sealy for manufacture and sale by its licensees. Under Sealy's supervision, and shall also include any and all items sold under any trademark, tradename, or slogan of Sealy or "Crestline". Except as specifically hereinafter provided in this contract, the term "Sealy products" shall include both the Sealy and Crestline manufactured products.

I:2. Sealy trademarks, tradenames, or slogans, whether or not registered, are defined as "Crestline", "Sealy Rest", "Sealy Tuftless", "Cotton Boll", "Truease", "Texlan", "Luxel", "Sunspun", "Durolife", "Posture Pillow", "Fast-Asleep", "Sleep Charm", "Natural Rest", "Air Vent", "Sleep Joy", "Sealy Kraft", "Airlite", "Enchanted Nights", "Airwoven", "Vital Third", "A Giant Pillow for the Body", "Sleeping on a Sealy is like Sleeping on a Cloud", "Good Homekeeper", "Miracle Mesh", "Golden Sleep", "Posturepedic", "Firm-O-Rest", "Con. sealy.bed", and such other trademarks, tradenames, and slogans as Sealy may hereafter, from time to time, use and disclose to Licensee. Licensee may be permitted by the Board of Directors of Sealy, Incorporated, to use any other trademark, tradename, or slogan which does not infringe upon any trademark, tradename, or slogan used by Sealy, and if permission is granted by Sealy to use such trademark, tradename, or slogan, such trademark, tradename, or slogan shall become the property of Sealy.

I:3. "Territory" is defined as the area, more fully described in II:2 below, in which the Licensee shall have the right, subject to the covenants and conditions hereinafter

set forth, to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and for such purpose only, to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications.

I:4. "Licensee" is defined as the person, firm, or corporation to whom Sealy allocates a specified area in which such person, firm, or corporation only shall manufacture [fol. 1367E] and sell Sealy products to retail stores, hospitals, and hotels, and for such purpose shall have the exclusive right to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, and use Sealy labels.

I:5. "Specifications" are defined to mean the written instructions or directions issued from time to time by Sealy specifying the type, quality, and quantity of materials to be used, and the methods and processes to be followed in the manufacture and fabrication of Sealy products.

II

Licensee's Territory and Term of Contract and Renewal

II:1. Party of the second part is named the sole and exclusive Licensee under this agreement, and shall have the sole right to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and use Sealy labels affixed to such products in the territory described in Paragraph II:2 below for the term of this license or any extension thereof.

II:2. The territory in which Licensee shall have the sole right to manufacture and sell Sealy products to retail stores, hospitals, and hotels, and use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, is as follows:

Following counties in the State of Michigan:

Genesee, Hillsdale, Huron, Lepeer, Lenawee, Livingston, Macomb, Monroe, Oakland, St. Clair, Sanilac, Tuscola, Washtenaw, and Wayne.

[fol. 1368E] II:3. This license shall remain in full force and effect so long as the licensee shall continue to well and truly perform each and every covenant made by the licensee

in this agreement, including specifically but without intending to limit the generalities of the foregoing, specific compliance with the provisions of Paragraph IV:3 below, and provided that Sealy shall have the right at the beginning of each five year period, beginning on the 1st day of Sept., 1954 to increase the minimum royalty to be paid by the licensee thereafter by a maximum of 25% of the amount of minimum royalty being paid by the licensee during the next preceding five year period. The anniversary date for each five year period shall be the same day and month as the date of the execution of this contract.

III

Sealy's Covenants and Agreements

Sealy covenants and agrees while this contract is in full force and effect:

III:1. To permit Licensee in the manufacture and sale of Sealy products, the use of Sealy patents, copyrights, trademarks, tradenames, slogans, exclusive rights, and licenses in the manner and form prescribed by Sealy.

III:2. To furnish Licensee true and correct copies of specifications currently used in the manufacture of Sealy products. Such specifications may be changed at any time by Sealy, and, when changed, written notice thereof together with the new specifications shall be furnished by Sealy to Licensee, and after thirty (30) days from the date of such notice shall become the specifications to which all Sealy products thereafter manufactured by Licensee must conform. The Board of Directors and/or President are authorized to grant Licensee sufficient time beyond the (30) day period, hereinbefore provided, within which to dispose of inventories rendered obsolete by changes in specifications.

III:3. To furnish Licensee full information concerning its methods and processes of manufacture and sale. Such methods and processes may be changed, from time to time, by Sealy, and, when changed, written notice thereof, together with the new methods and processes shall be furnished by Sealy to Licensee, and after thirty (30) days from the date of such notice shall become the methods and processes to which all Sealy products there-

after manufactured by Licensee must conform. If any of such processes or methods, furnished by Sealy to Licensee, should in any wise violate any of the laws, rules, or regulations of the United States Government or any of its Agencies, or the laws of the State in which Licensee manufactures or sells, then such processes or methods shall not be binding upon or enforceable against Licensee. The Board of Directors and/or President are authorized to grant Licensee sufficient time beyond the thirty (30) day period, hereinbefore provided, within which to dispose of inventories rendered obsolete by changes of process or methods of manufacture.

III:4. To defend at Sealy's expense any and all suits against Licensee for patent or trademark infringement because of Licensee's use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the manufacture of Sealy products, provided:

(a) That the said Sealy products were manufactured at the time of the alleged infringement in accordance with Sealy specifications.

(b) As conditions precedent for such protection Licensee shall give notice:

(1) By registered mail to Sealy at its office in Chicago, Illinois, promptly, of any claim of infringement against Licensee because of Licensee's use of Sealy patents, copyrights, trademarks, tradenames, slogans, or processes in the manufacture of Sealy products, and in such notice shall advise Sealy all facts concerning such alleged claim for infringement; and,

(2) In the event any suit should be filed against Licensee based upon such alleged infringement, to forward to Sealy at its office in Chicago, Illinois the complaint, petition, or copy thereof, in said cause within two (2) days after service of said complaint or petition upon Licensee.

[fol. 1370E] III:5. Sealy shall in no event incur any liability because of any claim, demand, or suit for infringement until such liability shall have been finally determined in a court of last resort after actual trial, and unless Sealy

shall have been given the notice, as herein provided, of the filing of any claim, demand, or suit against Licensee for such alleged infringement.

III:6. Sealy will not manufacture nor sell, nor will it without the consent of Licensee contract with or permit any other person, partnership, association, or corporation, to manufacture or sell Sealy products within the territory allocated to Licensee so long as this contract is in force; and Sealy will prevent insofar as it is legally permitted, the manufacture, sale or shipment of Sealy products in said territory by any other person, partnership, association, or corporation, except that Sealy, directly or through subsidiary, or by contract with another manufacturer shall have the right to manufacture and sell bed springs, sofa and divan springs, and springs of all types within the territory covered by this contract to Licensee, and if, for any reason, the Licensee in the territory does not desire to purchase all of such springs offered by Sealy in such territory, then to sell such springs to other persons, firms, or corporations in the territory covered by this contract, but not as Sealy products nor bearing Sealy labels.

III:7. Sealy will pay to Licensee as liquidated damages Ten (\$10.00) And No/100 Dollars for each Sealy product sold or shipped by Sealy into Licensee's exclusive territory; and Sealy will pay Ten (\$10.00) And No/100 Dollars, less the cost of collection for each such article sold or shipped in Licensee's exclusive territory by any person, partnership, association, or corporation having in force a contract with Sealy identical with or similar to this contract; provided that Sealy has theretofore collected said Ten (\$10.00) And No/100 Dollars for each such article from said person, partnership, association, or corporation manufacturing or selling such articles. But this provision shall not apply to the sale of Furniture Market Samples of Sealy, Incorporated, or to those products excepted in Paragraph III:6 hereof.

III:8. To permit Licensee, upon written request, to use the term "Sealy" in its corporate or business name, but [fol. 1371E] only in connection with the manufacture and sale of Sealy products and not for the manufacture and sale of any other products.

III:9. To use and expend at least fifty (50) percent of

the amount paid it as royalties under Paragraph V:1 and V:3 of this contract and other similar contracts which Sealy has with its Licensees, for national and other advertising, merchandising, and general sales promotion of Sealy products throughout the United States, it being understood that the amount expended by Sealy for (a) salaries, office, and administrative costs, and (b) for payments to Licensees for Sealy's share of local advertisement in Licensee's territory, are considered a part of such advertising, merchandising, and sales promotion expense. The type of advertising, merchandising and sales promotion, and the amount expended for each of such items and when such expenditure shall be made, shall be determined by Sealy Board of Directors.

IV

Licensee's Covenants and Agreements

Licensee covenants and agrees:

IV:1. To manufacture, during the term of this Agreement or any renewal thereof, at Licensee's own expense, Sealy products, in the designated territory, strictly in accordance with Sealy specifications, patents, processes, exclusive rights, and licenses now owned or controlled, or hereafter acquired by Sealy, and not to use or utilize any of such specifications, patents, processes, exclusive rights, and licenses in the manufacture of any other products; and to comply with changes made by Sealy in the specifications of all Sealy products or in the methods or process of their manufacture within the time or extension thereof, as provided in Paragraphs III:2, and III:3 hereof; and to sell Sealy products to retail stores and others subject to the provisions of this License.

IV:2. To use exclusively in the manufacture of Sealy products and for no other purpose, all items and/or supplies determined by Sealy to be exclusive for Sealy products, whether supplied by or procured through Sealy or purchased by the Licensee from any other source.

IV:3. To maintain in the designated territory such facilities for the manufacture of all Sealy mattresses and box springs (exclusive of Crestline mattresses) as shall be

deemed adequate by a two-thirds majority vote of Sealy's Board of Directors; and to maintain such selling force for [fol. 1372E] the sale of Sealy products as are manufactured by Licensee, in constant and continuous effort in the designated territory, as Sealy by a two-thirds majority vote of its Board of Directors shall deem adequate. Failure of Licensee to maintain such adequate manufacturing facilities and selling force shall be a violation of this License, and Sealy by a two-thirds majority vote of its Board of Directors shall have the right forthwith to terminate same by written notice addressed to Licensee at its last known place of business.

IV:4: That Licensee shall not:

(a) Manufacture, sell, or deliver within Licensee's exclusive territory any products competitive to Sealy which bear labels, trademarks, tradenames, or slogans of any nationally advertised competitor of Sealy.

(b) Sell or deliver any Sealy products outside of Licensee's exclusive territory, nor sell nor deliver Sealy products if Licensee knows or has reason to believe that the purchaser intends to resell or deliver the same for resale out of Licensee's exclusive territory; nor

(c) Sell or deliver any Sealy products to wholesalers, distributors, or mail order houses without first having obtained from Sealy permission to make such sale.

IV:5. To advertise Sealy products by means embodying and employing Sealy trademarks, tradenames, copyrights, slogans, or designs; and, upon request, either oral or in writing, by Sealy, to forthwith discontinue any advertising objectionable to Sealy; not to advertise nor represent that any of Licensee's products other than Sealy products are manufactured or sold by the makers of Sealy products unless so authorized by the President of Sealy or its Board of Directors; and if so authorized, to discontinue said form of advertising immediately upon request of Sealy or its President; not to advertise nor represent a product as a Sealy product unless it is a Sealy product manufactured in accordance with the provision of this contract and the specifications (pertaining to such product) issued by Sealy; not to use the Sealy name in connection with Licensee's ad-

vertisement or sales other than in the advertisement and sale of Sealy products; to use letterheads, billheads, in- [fol. 1373E] voices, envelopes, business cards, bearing the name "Sealy" in the transaction of business involving Sealy products; not to use Licensee's own name or corporate name (other than "Sealy") or any private brand, label or slogan, letterheads, billheads, or invoices in connection with the advertisement or sale of Sealy products; in no manner to trade on the prestige of Sealy nor to make use of the fact that Licensee is a manufacturer of Sealy merchandise and a Sealy Licensee, except in the sale of Sealy products; it being expressly agreed that Licensee shall not use or trade upon the Sealy name; prestige, nor the fact that the party of the second part is a Sealy Licensee except in the territory covered by this contract and in connection with the sale of Sealy products.

IV:6. To permit Sealy to exercise supervision and control over the manufacture, advertising, and sale by Licensee of Sealy products, so as to insure Licensee's conforming to Sealy's specifications, processes, and methods of manufacture and sale of Sealy products, and uniformity in said products; and in order to better enable Sealy to exercise such supervision and control, Licensee agrees to furnish Sealy specimens of Manufactured products and samples of material used in manufacturing, and to afford representatives of Sealy, including Sealy's engineer, access at reasonable hours to its plant, warehouse and records appertaining to the manufacture and sale of Sealy products. Sealy's engineer shall visit Licensee's plant at least once each year for a period not exceeding six (6) days, the expense for the engineer's service, including his compensation, to be paid for by Licensee. If Licensee requests an additional visit or visits by Sealy's engineer during any yearly period of this License (beginning January 1st of each year), the expense of such engineer, as hereinafter provided, shall be paid by Licensee; otherwise, no charge shall be made upon Licensee for such additional visit or visits by Sealy's engineer.

IV:7. To keep detailed, accurate, and complete records of all Sealy products and all other products of like kind manufactured by Licensee during each month in Licensee's exclusive territory; and to afford to Sealy and its repre-

sentatives access, at reasonable hours, to all of its records for the purpose of inspection, copy, or audit of said records; and to send to Sealy on or before the 15th day of each month a true and complete report showing the quantity of all products subject to royalty payments manufactured and sold by Licensee during the preceding month.

[fol. 1374E] IV:8. To affix to all Sealy products sold and manufactured and/or sold, and/or shipped, in Licensee's territory, the form of label and/or trademark, or trade-name, or slogan, as prescribed by Sealy; to place on Sealy products in the form and at the position thereon, as prescribed by Sealy, such other or supplementary labels, trademarks, tradenames, or slogans as Sealy may, from time to time, determine; and not to affix or attach a label containing the name "Sealy" in any form, nor any of Sealy's trademarks, tradenames, slogans or labels to a product other than one manufactured by Licensee in accordance with this contract and the specifications of Sealy issued hereunder.

IV:9. To purchase from Sealy and to pay Sealy therefor the labels designated by Sealy to be affixed to Sealy products.

IV:10. If, during the term of this contract, Licensee has obtained Sealy's consent to use the term "Sealy" in its corporate or business name, Licensee will, upon termination of this contract for any reason whatsoever, immediately eliminate from its corporate or business name the term "Sealy" and upon Licensee's failure to do so, Sealy shall have the right to obtain specific relief by injunction in accordance with this provision, but such right shall be cumulative and not exclusive of any other right which Sealy may have for Licensee's breach of this provision of the contract.

IV:11. That Sealy's patents, copyrights, trademarks, tradenames, slogans, and processes are valid and owned by Sealy, and that Licensee will not commit, aid, abet, nor assist, any other person, partnership, association, or corporation in committing any act which might in any wise infringe on any of said patents, copyrights, tradenames, trademarks, slogans, or processes.

IV:12. During the term or any renewal hereof, to make no disclosure, except to its own employees using the same,

of any manufacturing process or formula, or machinery used for the manufacture of Sealy products or Sealy's methods of sale; and, in the manufacture of Sealy products or of Sealy's methods of sale, after the termination of this License, to make no disclosure of any such manufacturing process or formula or of the machinery used.

[fol. 1375E] IV:13. Licensee will not, during the term of this License, do any act or pursue any course of action either in manufacturing, selling, merchandising, or advertising Sealy products, or in the manufacture, sale, merchandising, or advertising of any other products manufactured by Licensee, which will be detrimental or injurious to Sealy, or which will, in any way, damage, injure, deteriorate, or otherwise harmfully affect the value of any of Sealy's trademarks, tradenames, slogans, patents, processes, or which will adversely affect Sealy, its trademarks, tradenames, slogans, patents, or processes, or the products of Sealy manufactured under such processes, or merchandised, advertised, or sold under any of Sealy's trademarks, tradenames, slogans, patents, or processes. The determination of whether any such act or series of acts shall or may have such harmful, injurious, deleterious, or adverse effect, shall rest in the sole determination of the Board of Directors of Sealy, and upon such Board's finding that Licensee has been guilty of any such act or acts, the Board may forthwith terminate the License, but said Board shall have the sole discretion to determine that the Licensee may continue, upon proof satisfactory to the Board, that the act or acts of Licensee complained of have been discontinued or that the harmful effects have either been eradicated or were of such nature as to have no permanent ill effect upon Sealy, its products, trademarks, tradenames, slogans, patents, or processes.

IV:14. To comply with such reasonable rules and regulations not inconsistent with the terms of this License as Sealy may, from time to time, establish for the manufacture and sale of Sealy products and the operation of Licensee's business as a Sealy Licensee.

IV:15. To perform in good faith each and every covenant of this agreement.

[fol. 1376E]

V

Royalty and Charges To Be Paid by Licensee Under This Contract

V:1. As a consideration for its exclusive right to manufacture and sell Sealy products and to use Sealy patents, trademarks, tradenames, copyrights, slogans, methods, processes, and specifications, licensee shall pay to Sealy the following royalty each year, which shall be based upon the sales par (as hereinafter defined) or the actual sales of the licensee, whichever is greater, for the preceding calendar year, and such royalty shall be:

3% of the first \$1,000,000.00 of licensee's sales par or actual sales;

2% of the second \$1,000,000.00 of licensee's sales par or actual sales;


1% of the third \$1,000,000.00 of licensee's sales par or actual sales; and

2% of licensee's sales par or actual sales in excess of \$3,000,000.00.

Licensee shall pay the applicable royalty monthly on the actual gross sales for the preceding month. Any deficiency between the amount thus paid by the licensee monthly on actual gross sales and the amount owed by the licensee predicated upon the licensee's sales par shall be paid within thirty (30) days following the end of the calendar year.

For the purposes of this section "sales par" is to be determined by Sealy in accordance with the plan for determining sales pars heretofore adopted by Sealy during the year 1953 which for the year 1953 is agreed to be \$894,141. Notice of the sales par for each year after 1953 and of the minimum royalty due by licensee thereafter shall be given by Sealy to licensee at least forty (40) days prior to the 1st day of July of each year.

(a) Should Licensee fail or refuse to pay promptly when due the monthly royalty or percentage as hereinbefore set out, or should Licensee fail or refuse to pay promptly when due its annual royalty or percentage of gross sales, or should Licensee fail or refuse to pay any other indebtedness



that may be due Sealy or its sources of supply promptly when due and should any one of said defaults continue for a period of 15 days beyond the due date, then Sealy, at its option, shall have the right to cancel this license forthwith, and such right shall be cumulative of any other right or remedy which Sealy may have to enforce the same and of any indebtedness that may be due it or its sources of supply.

(b) Such royalty shall be paid upon sales of Sealy products, or other like products, except sales of Licensee's manufactured products other than Sealy products to bona [fol. 1377E] fide jobbers and mail order houses approved by Sealy or to a United States Governmental Agency or the Agency of any State or political subdivision thereof.

(c) The term "gross sales" as used herein shall not include sales of any class of manufactured products herein defined as "New Sealy Products" for which Sealy has not issued specifications and processes at the time this License Agreement dated the 1st day of September, 1954, is made, but of thereafter and during the term of this License Agreement Sealy should issue specifications and processes for the manufacture of any new class of manufactured products (herein defined as "New Sealy Products") which Licensee then manufactures, Licensee shall pay royalty on its gross sales of such "New Sealy Products" and any like products manufactured by Licensee only in the event Licensee uses the Sealy specifications and/or processes and/or methods of merchandising or selling such new class of Sealy manufactured products herein defined as "New Sealy Products".

(d) The term "New Sealy Products" shall include any products designed, developed, or authorized for manufacture by Sealy, or the specifications for the manufacture or design of which are given by Sealy, subsequent to the date of this contract, and which products were not, upon the date of this contract, either manufactured, designed, or authorized for manufacture or design, or for which no specifications for the manufacture, design, or fabrication had been issued, by Sealy on or before the date of this License.

(e) "Gross Sales" do not include P.M.'s, returns, allowances, and freight allowed customers.

(f) The term "bona fide jobbers and mail order houses" does not include any retail store outlet operated directly or indirectly by the jobber or mail order house, and any sale of Licensee's manufactured products to a retail store outlet operated directly or indirectly by a bona fide jobber or by a mail order house shall be included in Licensee's gross sales upon which the royalty, as hereinbefore provided is to be paid by Licensee.

V:2. Licensee agrees to pay for all advertising material and other displays furnished by Sealy, or by sources designated by Sealy, upon the order of Licensee within thirty (30) days from the date when furnished. It is, however, understood and agreed that Sealy, without order of the [fol. 1378E] Licensee, may ship advertising materials and displays which Sealy deems necessary for the promotion and welfare of its business to Licensee not exceeding the sum of Four Hundred Fifty (\$450.) and No/100 Dollars per annum, and such items so shipped shall be paid for by Licensee within thirty (30) days from the date of shipment.

V:3. Licensee agrees to pay for all material, ticking, cotton, and supplies furnished Licensee by Sealy or Sealy's sources of supply at prices and upon terms agreed upon between Sealy and Licensee, but Sealy shall be under no obligation whatsoever to furnish Licensee any material, ticking, cotton, innersprings, or other supplies.

V:4. Licensee agrees to pay to Sealy on demand the sum of Ten (\$10.00) and No/100 Dollars: (a) for each Sealy product manufactured, sold, or delivered by Licensee outside of Licensee's exclusive territory; (b) for each Sealy product sold if Licensee knows or should have known that the purchaser intends to resell or deliver the same for resale outside of Licensee's exclusive territory; and, (c) for each Sealy product sold or delivered to any mail order house or jobber without Sealy's written consent. Licensee further agrees to pay to Sealy on demand the full retail price of any Sealy Product manufactured or sold by Licensee to any purchaser, on the production of evidence satisfactory to Sealy that such product was not made in accordance with the Sealy specifications, or that such product was mislabeled or misbranded, or that inferior materials or

workmanship were used in its manufacture; and this Agreement shall remain in full force and effect after the termination of this contract.

V:5. Subject to the provisions of Paragraph IV:6 above, Licensee agrees to pay to Sealy charges for the services rendered Licensee by Sealy's engineer at a per diem rate fixed by the Board of Directors for such service, which shall include the traveling and hotel expenses of the engineer.

VI

Covenants of Both Parties

Both parties hereto covenant and agree:

VI:1. That within ninety (90) days from any termination of this contract, Sealy shall have the right to repurchase at Licensee's original cost all or any of the following:

- [fol. 1379E] (a) The whole or any part of Sealy labels purchased by Licensee;
- (b) The whole or any part of the manufactured or partially manufactured Sealy products;
- (c) Raw materials, or supplies, purchased by Licensee for the manufacture of Sealy products.

VI:2. In the event Licensee becomes insolvent, or a petition is filed by or against Licensee under the provisions of the Federal Bankruptcy Act (which shall include proceedings for reorganization, adjustments with creditors, or any other form of relief under the Bankruptcy Act of the United States), or if Licensee suffers or permits a Receiver to be appointed in any insolvency proceedings in a State or Federal Court, or makes an assignment of the whole or any portion of its assets for the benefit of its creditors, or in the event Licensee suspends or discontinues its business operations for a period of three (3) months, then upon the happening of either one of said events this contract shall terminate and be at an end.

VI:3. (a) Except as otherwise herein provided, if Licensee defaults in the performance or violates any provision of this Contract, Sealy shall give to the Licensee thirty (30) days written notice of its intention to terminate this Contract by reason of such violation or default; and Licensee

shall be given an opportunity to be heard with respect to such default or violation prior to action being taken thereon by Sealy's Board of Directors. If such default or violation is, to the satisfaction of two-thirds (2/3) of Sealy's Board of Directors, remedied during such thirty (30) day period, beginning with the written notice given by Sealy, then this Contract shall remain of full force and effect; but if such default or violation is not so remedied to the satisfaction of a two-thirds (2/3) majority vote of Sealy's Board of Directors, then this contract shall be at an end at the expiration of such thirty (30) day period. The determination of whether or not such default or violation is remedied shall rest in the exclusive discretion and control of the two-thirds (2/3) majority of Sealy's Board of Directors.

VI:3. (b) Should Licensee fail or refuse within the time and in the manner provided in Paragraph VI:3 (a) above to remedy any such default or violation and thus cause Sealy to declare this contract to be at an end, then Licensee agrees to pay Licensor as liquidated damages for such breach a sum equal to the amount of royalty paid by Licensee during the twelve (12) months next preceding the date [fol. 1380E] of the termination of this contract.

VI:3. (c) Should Licensee default in the performance or violate any provisions of this contract, Licensee must give thirty (30) days written notice of its intention to terminate this contract by reason of such violation or default and if such default or violation is remedied during such thirty (30) day period, then this contract shall remain of full force and effect, and if not so remedied, then this contract shall be at an end at the expiration of such thirty (30) day period.

VI:4. (a) Licensee may voluntarily terminate this contract by (1) giving Sealy two (2) months' written notice of its intention so to terminate, and (2) Licensee shall pay to Sealy as consideration for its release from this contract a sum equal to twelve (12) months' minimum royalty. Upon the giving of such notice by Licensee, and the payment of such sum, the contract shall be at an end at the expiration of the two (2) months' period, beginning with the date of the written notice herein provided for.

VI:4. (b) In the event Licensee voluntarily or involuntarily suspends or discontinues its business operations for

a period of three (3) months, Sealy shall have the right to recover as liquidated damages for such breach a sum equal to the amount of royalty paid by Licensee during the twelve (12) months next preceding the date when Licensee began the suspension or discontinuance of its business, or a sum equal to twelve (12) months' minimum royalty, as provided in this contract, whichever is greater.

VI:5. (a) After the termination of this contract for any reason, Licensee agrees that it will not in the manufacture, sale, or advertising of any of its products use the name "Sealy" or any Sealy patents, secret methods, specifications, or processes which Licensee has at any time used in the manufacture, sale, and advertising of Sealy products.

VI:5. (b) If, after having received notice from Sealy of the termination of this License for any reason, Licensee shall continue to use the name "Sealy", or shall use any Sealy patents, secret methods, specifications, or processes in the manufacture, sale, or advertising of its products, or represent that it is a Licensee of Sealy, Sealy shall, in addition to any other remedy provided by law or in equity be entitled to recover from the Licensee as liquidated damages a sum equal to three (3) times the amount of minimum monthly royalty called for in V:1 (a) of this contract for each month or part thereof in which Licensee shall use the name "Sealy" or shall use any Sealy patents, secret methods, specifications, or processes in the manufacture, sale, or advertising of its products, or represent that it is a Licensee of Sealy.

VI:6. Failure of Sealy to act upon breach or violation of this contract, or to notify Licensee of any breach or violation of this contract, shall not constitute a waiver of any such breach or violation or if Sealy's right to terminate this contract at a later date because of such breach or violation.

VI:7. This contract is a personal contract between the parties hereto, and may not be assigned, nor may any of the rights thereunder be transferred in any manner by Licensee without Sealy's written consent; and such consent must be procured in the event Licensee is a corporation, and there is any change in the ownership of stock therein whereby the voting control of the corporation is vested in persons other than those holding such voting control there-

in as of the date of this contract, provided that there shall be deemed to be no change in the voting control of the corporation Licensee in the event such voting control is exercised by the Executors or Administrators of a deceased stockholder or stockholders, or by a Trustee or Trustees under a testamentary or inter vivos trust executed by a stockholder or stockholders for the benefit of relatives within the second degree.

VI:8. That Licensee has no authority to bind Sealy upon any contract or obligation whatsoever. Nothing in this contract shall be construed as constituting Licensee as agent for Sealy for any purpose other than the appointment of Licensee to use and utilize the patents, trademarks, tradenames, slogans, processes, and specifications as provided in this License.

VI:9. Sealy shall not be liable to any person, firm, or corporation for any acts or omissions of Licensee or for unsatisfactory merchandise, made or sold by Licensee, or for any misrepresentations made by Licensee.

VII

All notices provided for to be given under this contract shall be in writing.

VIII

This contract shall be separable, and if any portion here-[fol. 1382E] of shall be held invalid for any reason, the remainder shall not thereby be invalidated but shall remain in full force and effect.

IX

Except where Sealy's Board of Directors is specifically required to act under any provision of this contract, the term "Sealy's Board of Directors" shall be deemed to include the whole Board of Directors or the Executive Committee thereof.

X

This contract shall be governed by the laws of the State of Illinois, and shall not become binding upon or effective until a copy thereof, executed by Licensee, shall be received by Sealy at its office in Chicago, Illinois.

XI

This contract constitutes the sole and entire agreement between Sealy and Licensee, and no modification thereof shall be binding unless attached hereto and signed by each party, and no representations, promises, or inducements shall be binding upon Sealy or Licensee except as herein stated.

In Witness Whereof, the parties hereto each acting through its duly authorized officers, have hereunto set their hands and affixed their seals, on this, the day and year first above written.

.. Sealy, Incorporated, (Seal), By E. H. Bergmann,
President.

Attest:

— — —, Secretary.

Brown Reliable Bedding Company (Seal), By Peter
D. Brown, President.

Attest:

H. King Brown, Secretary.

[fol. 1383E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1107

Interrogatory 7:

"7. State for each year since February 13, 1957 the sources of income of Sealy, Inc. and amount of income from each such source.

Answer to Interrogatory 7:

The following table shows for the last 6 months of 1957, for the year 1958 and for the year 1959 the sources of income of Sealy, Inc. and amount of income from each such source. (Due to Sealy, Inc.'s accounting system no such information is available for the periods February 13, 1957 through June 30, 1957 and January 1, 1960 through June 14, 1960):

[fol. 1384E] Income for the Period 7/1/57-12/31/57		
Source		Amount
Royalty		
Licensees—	\$580,596.94	
Steadley Company	2,547.73	\$583,144.67
Volume Rebates		
Miracle Mesh	\$ 1,530.22	
Surcharges		
Ticking	60,063.58	
Innerspring Purchases	375.46	61,969.26
Merchandising Aids		14,383.88
Administrative Purchases		
Labels	\$ 14,675.48	
Rubber Cores	25,772.37	
Buttons	1,145.68	
Belnap & Thompson Sales	2,321.06	43,914.59
Administrative Service, Posture Prod., Inc.		5,000.00
Sales of Trademarks & Trade Names to Sealy Sleep Products, Ltd.		2,500.00
Interest Earned		1,954.10
Dividends Received		3,945.07
Miscellaneous Income		236.76
Discounts—Net		95.09
Total Income		<u>\$717,143.42</u>

[fol. 1385E] Income for the Period January 1, 1958 through December 31, 1958

Source	Amount
Royalty	
Licenses—	
Steadley Company.....	\$1,214,078.18
	1,802.07
	<u>\$1,215,880.25</u>
Volume Rebates	
Miracle Mesh.....	\$ 5,799.75
Surcharges	
Ticking.....	84,931.57
Ticking—For Advertising.....	116,804.41
	<u>207,535.73</u>
Merchandising Aids	*(21,561.04)
Administrative Purchases	
Belnap & Thompson Sales.....	815.06
Bolta Flex Panels.....	*(1,625.96)
Buttons.....	640.57
Headboards.....	*(1,084.29)*
Labels.....	17,771.92
Rubber Cores.....	19,664.42
	<u>36,181.72</u>
Adm. Services, Posture Products, Inc.....	7,500.00
Sale of Trademarks & Trade Names to	
Sealy Sleep Products, Ltd.....	5,000.00
Interest Earned.....	3,079.00
Dividends Received.....	2,223.00
Miscellaneous Income.....	2,639.96
Discounts—Net.....	16,468.11
	<u>36,910.07</u>
Total Income	<u><u>\$1,474,946.73</u></u>

* Loss.

[fol. 1386E] Income for the Period January 1, 1959 through December 31, 1959

Source		Amount
Royalty		
Licenses.....	\$1,358,634.58	
Steadley Company.....	3,336.42	
		\$1,361,971.00
Special Assessment to Licensees		
A. Godfrey Radio Program.....		142,068.45
Surcharges		
Ticking.....	80,513.04	
Ticking—For Advertising.....	130,354.05	
Rubber Cores—For Advertising.....	43,135.59	
		254,002.68
Merchandising Aids.....		11,898.65
Profit from Sale of Bedding-Fontainebleau Cover Partial Costs of Posturepedic Contest.....		19,333.78
Administrative Purchases		
Belnap & Thompson Sales.....	212.31	
Bolta Flex Panels.....	3,410.45	
Buttons.....	801.31	
Headboards.....	*(1,677.89)	
Labels.....	23,915.34	
Rubber Cores.....	14,378.54	
Decals.....	162.74	
Upholstery Material.....	*(1,018.35)	
		40,094.46
Adm. Services—Posture Products, Inc.....	7,500.00	
Sale of Trademarks and Trade Names to Sealy Sleep Products Limited.....	5,000.00	
Interest Earned.....	3,168.94	
Dividends Received.....	2,389.74	
Miscellaneous Income.....	737.40	
Discounts—Net.....	18,398.74	
		37,192.82
Total income.....		<u>\$1,866,561.84</u>

* Loss.

[fol. 1387E] Interrogatory 8:

"8. State for each year since February 13, 1957 the total dollar sales volume of all Sealy products sold by.

- (a) all licensees;
- (b) each licensee as reported by licensees to Sealy, Inc."

Answer to Interrogatory 8:

The following table shows for each year since 1957 and the first 5 months of 1960 the total dollar sales volume of Sealy products within licensed territories as reported to Sealy, Inc. by each licensee and all licensees:

Reported Total Dollar Sales Volume of Sealy Products in Licensed Territories

Licensee

	Year 1957	Year 1958	Year 1959	Through 5/31/60
Eagle Mattress Co., Inc.	\$ 1,944,950	\$ 1,909,579	\$ 2,010,868	\$ 764,162
The Maryland Bedding Company	2,994,969	3,149,615	2,836,263	1,046,608
Sealy Mattress Co. of Northern California	1,369,854	1,721,943	1,864,043	676,869
Metcalfe Brothers, Inc.	1,036,756	987,732	1,124,808	374,237
Sealy Mattress Company of Houston	1,371,300	1,329,942	1,588,007	474,095
Sealy Mattress Company of New York City, Inc.	2,222,662	2,183,740	2,212,295	832,507
Fisher Products Company	1,994,175	1,975,943	2,081,377	723,865
Sealy Mattress Company	6,302,343	6,236,383	6,453,858	2,373,211
The Ohio Mattress Co.	5,030,963	4,129,743	4,458,827	1,530,827
Colorado Mattress Manufacturing Company	1,546,419	1,798,297	1,875,701	650,570
Schmitt & Henry Manufacturing Co.	1,004,304	1,212,269	1,019,769	398,595
Brown Reliable Bedding Company	2,369,667	1,795,828	1,737,470	631,345
Sleepcraft, Inc.	1,711,703	1,994,189	2,139,878	722,641
David Mfg. Co.	1,049,485	1,139,621	1,269,879	410,475
Pearless Mattress Company	1,156,112	1,166,551	1,199,886	384,356
Sealy Mattress Co. of Southern California	2,366,880	2,615,428	2,901,188	1,028,586
Logan Co.	857,948	923,627	924,457	301,138
Slumber Products Corp.	4,309,134	4,703,633	4,787,450	1,722,593
The Waterbury Mattress Co.	2,515,851	2,375,486	2,501,348	906,618
York Sleep Products, Inc.	533,627	770,937	1,182,838	498,302
Sealy Mattress Co. of N. J., Inc.	1,405,491	1,361,208	1,354,077	513,296
Slumber Mattress Co.	2,262,482	1,885,980	1,726,483	713,477
Pettit Bedding Company	1,036,911	1,191,997	1,396,110	494,368
The Fred G. Hodges Bedding Company	766,738	817,820	891,500	360,494
Super-Rest Products Corporation	806,761	800,885	865,502	329,858
Sealy Mattress Company of St. Paul	1,489,397	1,649,171	1,797,825	590,657
Empire State Bedding Co., Inc.	2,219,536	2,227,136	1,983,485	705,451
H. W. Martin Co.	—	—	—	—
Sealy Mattress Co. of Puerto Rico, Inc.*	—	—	—	—
Comfo-Sleep, Inc.*	—	—	—	—
Total All Licensees	\$52,676,418	\$53,954,483	\$56,182,012	\$20,156,188

* License became effective January 1, 1960 and no sales have been reported as yet.

[fol. 1389E] Interrogatory 9:

"9. State for each year since February 13, 1957 the total dollar sales volume of each non-Sealy product or licensee's private brand product sold by

(a) All licensees;

(b) Each licensee

as reported by licensees to Sealy, Inc."

Answer to Interrogatory 9:

The total dollar volume for the years 1957, 1958, 1959 and the first 5 months of 1960 of licensees' non-Sealy or private brand products sold within each licensee's Sealy territory, as reported to Sealy, Inc., was as follows:

Licensee

Licensee	Year 1957	Year 1958	Year 1959	Through 5/31/1960
Eagle Mattress Co., Inc.	—	\$ 641	\$ 3,610	\$ 1,396
The Maryland Bedding Company	—	—	14,206	—
Sealy Mattress Co. of Northern California	—	—	—	—
Metcalfe Brothers, Incorporated	—	—	—	—
Sealy Mattress Company of Houston	25,970	9,403	—	9,152
Sealy Mattress Company of New York City, Inc.	7,796	—	—	49,061
Fisher Products Company	—	—	—	—
Sealy Mattress Company	—	—	—	—
The Ohio Mattress Company	—	—	—	—
Colorado Mattress Manufacturing Company	340,820	2,356	41,406	8,369
Schmitt & Henry Manufacturing Co.	1,172,824	1,262,397	1,396,474	498,730
Brown Reliable Bedding Company	25,955	29,560	27,818	14,687
Sleepcraft, Inc.	26,361	27,192	37,051	2,077
David Mfg. Co.	4,525	11,682	19,389	7,652
Fearless Mattress Company	72,065	10,209	—	9,927
Sealy Mattress Co. of Southern California	176,269	244,129	274,982	89,181
Logan Co.	—	18,098	15,264	7,158
Slumber Products Corporation	1,131	71	—	59
The Waterbury Mattress Co.	637,455	481,402	317,588	53,536
York Sleep Products, Inc.	85,323	46,561	30,387	15,488
[fol. 1390E]	—	—	—	—
Sealy Mattress Co. of N. J., Inc.	2,974	4,518	—	—
Slumber Mattress Co.	—	—	—	—
Pettit Bedding Company	—	—	—	—
The Fred G. Hodges Bedding Company	105,761	135,319	149,652	52,298
Super-Rest Products Corporation	107,977	108,893	125,676	46,991
Sealy Mattress Company of St. Paul	88,543	16,117	3,958	1,392
Empire State Bedding Co., Inc.	60,884	60,647	5,789	1,738
H. W. Martin Co.	—	—	—	—
Sealy Mattress Co. of Puerto Rico, Inc.	—	—	—	—
Comfo-Sleep, Inc.	—	—	—	—
	\$2,942,632	\$2,467,185	\$2,463,260	\$868,865

* No reports were made by licensees to Sealy, Inc. with respect to sales of licensees' non-Sealy or private brand products outside their Sealy territories.

** License became effective January 1, 1960 and no sales have been reported as yet.

[fol. 1391E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1113

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF
ILLINOIS, EASTERN DIVISION

Civil Action No. 60 C 844

UNITED STATES OF AMERICA, Plaintiff,

v.

SEALY, INC., Defendant.

DEFENDANT'S ANSWERS TO CERTAIN OF PLAINTIFF'S INTER-
ROGATORIES SERVED OF DEFENDANT, SEALY, INC., June 14,
1960.

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[fol. 1392E] Interrogatory 58:

"58. Identify for the period since February 13, 1957 the name, members of, and chairman of each committee of Sealy, Inc. and describe what each committee did, including each of the following committees if in existence during any part of the stated period: (a) Executive; (b) Advertising and Merchandising; (c) Sales Managers; (d) Promotional sales; (e) Specification and costs; (f) Upholstery; (g) Markets; (h) Planning and expansion; (i) Grievance; (j) Licensee guidance and advisory."

Answer to Interrogatory 58:

The table below indicates for the period since February 13, 1957 the membership and the chairmanship for the *Executive Committee* of Sealy, Inc. The Executive Committee has during said period, between meetings of the Board of Directors of Sealy, Inc., met at various times and has had the right to exercise the powers of said Board except the power to alter or amend the by-laws of Sealy,

Inc. and the power to fill vacancies in its own membership. At such meetings the Executive Committee considered and acted upon such matters as advertising, specifications, quality control, contracts and provided counsel to the President of Sealy, Inc. in corporate affairs:

Executive Committee Membership	Chairman (Year)	Year of Membership			
		1957	1958	1959	1960
M. A. Kaplan.....	1957, 1959, 1960	X	X	X	X
P. D. Brown.....		X	X	X	-
L. G. Haas.....		X	X	X	X
E. M. Wuliger.....		X	X	X	X
M. H. Yulman.....	1958	X	X	X	X
H. B. Fouts.....		-	X	X	X
E. H. Bergmann.....		-	X	X	X
H. F. Kaufman.....		-	X	X	X
I. L. Fisher.....		-	-	-	X

[fol. 1393E] During 1957 and 1958 the *Advertising & Merchandising Committee* of Sealy, Inc. considered various advertising and promotional campaigns, reviewed merchandising techniques and developed national advertising and merchandising programs. The membership and chairmanship of the Advertising & Merchandising Committee during that period were as follows:

Advertising & Merchandising Committee Membership	Chairman (Year)	Year of Membership	
		1957	1958
E. M. Wuliger.....	1957	X	X
M. A. Kaplan.....		X	X
W. H. Walzer.....		X	X
B. Nathanson.....		X	X
C. V. Bovard.....		X	X
G. C. Shappell.....		X	X
R. C. Stuart.....	1958	X	-
Seymour Nordenburg.....		-	X
I. L. Fisher.....		-	X

During 1959 and 1960 the *Sales Promotion & Product Planning Committee* of Sealy, Inc. has been responsible for the development of sales and advertising, the merchandising of new products, the improvement of products and for research. The membership and chairmanship of the Sales Promotion & Product Planning Committee during that period were as follows:

Sales Promotion & Product Planning Committee Membership	Chairman (Year)	Year of Membership	
		1959	1960
I. L. Fisher.....		X	-
M. A. Kaplan.....		X	X
E. C. Haas, Jr.....		X	X
W. H. Walser.....	1959	X	-
E. M. Wuliger.....	1960	X	X
J. R. Rudick.....		-	X
J. J. Willens.....		-	X
E. H. Bergmann.....		X	X
Howard G. Haas.....		X	X
Gerald C. Shappell.....		X	X
Carl N. Singer.....		-	X

[fol. 1394E] During the period since February 13, 1957 several Sealy, Inc. committees have existed which had as their purpose the creation and development of new products and the improvement of existing products in both the upholstery and the bedding line. These committees prepared manufacturing specifications to be followed with respect to such products and in addition such committees developed estimated average manufacturing costs of such products. The membership, chairmanship and name of each such committee as well as the time period during which each committee existed are set out below:

**Bedding—Product Development and Specifications
(1957)**

Membership	Chairman
L. G. Haas.....	X
E. C. Haas, Sr.....	
J. L. Metcalfe.....	
J. J. Willens.....	
D. T. Armstrong.....	
H. R. Judson.....	

Cost—Bedding & Upholstery (1957)

Membership

Chairman

Bernard M. S. Kegan.....	X
C. W. Langstaff.....	
Allen Unger.....	
Seessel Wayne.....	
D. T. Armstrong.....	
G. L. Fraikin.....	

[fol. 1395E] Upholstery—Advisory & Finalization (1957)

Membership

Chairman

L. G. Haas.....	X
M. A. Kaplan.....	
M. I. Walzer.....	
E. M. Wuliger.....	
D. T. Armstrong.....	
H. R. Judson.....	
W. A. Marbaugh.....	
L. C. Algoren.....	

Specifications (1958)

Membership

Chairman

David T. Armstrong.....	X
King Brown.....	
L. G. Haas.....	
Ben Rosenfeld.....	
Allan Unger.....	
M. I. Walzer.....	
Seessel Wayne.....	

Upholstery—Product Planning (1959)

Membership

Chairman

E. C. Haas, Jr.....	X
David T. Armstrong.....	
Sam Aaronson.....	

Bedding—Product Planning (1959)

Membership

Chairman

I. L. Fisher.....	X
David T. Armstrong.....	
Sam Aaronson.....	

Upholstery Sub-Committee (1960)

Membership

Chairman

Edgar C. Haas, Jr.....	X
Gus Amter.....	
J. Rotblatt.....	
J. R. Rudick.....	
A. S. Wayne.....	
J. J. Willens.....	
Sam Aaronson.....	
H. G. Haas.....	
Warren Pope.....	

[fol. 1396E]

Bedding Sub-Committee (1960)

Membership

Chairman

J. R. Rudick.....	X
J. S. Alman.....	
I. L. Fisher.....	
B. M. S. Kegan.....	
E. M. Salomon.....	
M. W. Walzer.....	
Sam Aaronson.....	

During the years 1957, 1958 and 1959 the *Market Committee* of Sealy, Inc. made preparation for markets, secured space for such markets, and decorated space for displays of Sealy products at those markets. The committee suggested the type of merchandise to be shown during such markets and established procedures to be followed during markets. The membership of that committee is shown below.

Market Committee Membership	Years of Membership		
	1957	1958	1959
W. H. Walzer *	X	X	
M. A. Kaplan *	X	X	
J. L. Metcalfe *	X	X	X
M. H. Yulman *	X	X	X
M. J. Marzluff *	X	X	X
L. G. Haas *		X	X
E. Salomon, Jr. *			X
R. Unger *			X
Howard Haas			X
Del Markoff			X

* Chairman for an individual market.

For the year 1960 the functions of the Market Committee described above have been divided between a *Chicago Market Committee* and a *Distant Market Committee*. The membership of these two committees is indicated below:

[fol. 1397E]

**Chicago Market Committee
(1960)**

Membership	Chairman
Ted Deutsch	
William Eddie	
E. J. Larkin	
J. Hotblatt	
K. Sackse	
E. M. Wuliger	
H. G. Haas	X

Distant Market Committee (1960)

Membership

L. G. Haas *
M. J. Marzluff *
J. V. Moffitt, Jr. *
E. M. Salomon, Jr. *
M. H. Yulman *

* Chairman for an individual market.

During 1957 the *Planning Committee* of Sealy, Inc. was responsible for the investigation and development of policy matters relating to franchise operations. In 1958 no Sealy, Inc. committee performed those functions but for the years 1959 and 1960 the *Policy Planning Committee* was responsible for those functions. The membership and chairmanship of both committees were as follows:

Planning Committee (1957)

Membership

Chairman

H. B. Fouts	X
P. D. Brown	
R. G. Culp	
Ben Rosenfeld	

Policy Planning Committee (1959-1960)

Membership

Chairman

1959

1960

M. H. Yulman	1959-60	X	X
H. B. Fouts		X	X
B. M. S. Kegan		X	X
H. F. Kaufman		X	X
J. J. Willens		X	X
E. H. Bergmann		X	X

[fol. 1398E] During the period since February 13, 1957 the *Sales Managers Sub-Committee* of Sealy, Inc. has considered the efficacy of various sales promotions and has furnished ideas for future promotions. The membership and chairmanship of that committee are shown below:

Sales Managers Sub-Committee Membership	Chairman (Year)	Year of Membership			
		1957	1958	1959	1960
R. C. Stuart.....	1957	X	—	—	—
C. V. Bovard.....		X	X	—	—
G. C. Shappell.....		X	X	—	—
Victor Cleinman.....		X	X	—	X
A. L. Goodman.....		X	X	—	—
E. Larkin.....		X	X	—	—
C. B. McGillivray.....		X	X	—	—
Kolmon Sackas.....		X	X	—	—
Roy Unger.....		X	X	—	—
Seymour Nordenburg.....		—	X	—	—
W. H. Walser.....	1958	—	—	X	—
M. A. Kaplan.....	1959	—	—	X	—
Howard Haas.....	1960	—	—	X	X
Ted Deutsch.....		—	—	—	X
Al Harmon.....		—	—	—	X
Manny Kramer.....		—	—	—	X
Robert McLelland.....		—	—	—	X
J. Rolblatt.....		—	—	—	X
M. Marchi.....		—	—	—	X

During the years 1959 and 1960 the *National Accounts Sub-Committee* of Sealy, Inc. investigated and developed sales programs designed to increase sales through retailers utilizing a centralized purchasing office. Membership as well as chairmanship of that committee is set out below:

**National Accounts Sub-Committee
(1959-1960)**

Membership	Chairman	1959	1960
M. A. Kaplan.....	1959-1960	X	X
Del Markoff.....		X	X
H. F. Kaufman.....		—	X
Manny Kramer.....		—	X
E. J. Larkin.....		—	X
J. R. Rudick.....		—	X
E. M. Salomon.....		—	X

[fol. 1399E] The *Budget & Finance Subcommittee* of Sealy, Inc. during the years 1959 and 1960 reviewed budgets and various financial programs of Sealy, Inc. Membership and chairmanship of that committee were as follows:

Budget & Finance Sub-Committee Membership	Chairman- ship	1959	1960
H. F. Kaufman.....	1959-1960	X	X
H. B. Fouts.....		X	X
L. G. Haas.....		X	X
P. D. Brown.....		—	X
Hugh J. Gallagher.....		X	X

During 1960 Sealy, Inc.'s *Subcommittee on Industry Practices* considered and documented practices existing in the bedding industry and was made up of the following members.

Industry Practices Sub-Committee Membership	Chairman
B. M. S. Kegan.....	X
I. L. Fisher.....	
L. G. Haas.....	

[fol. 1400E] Interrogatory #62:

"62. State whether it was one of the responsibilities of the Director of Advertising and Merchandising, or any other employee of Sealy, Inc. during any part of the period since April 12, 1956 to do any of the following:

- (a) Recommend pricing of products for resale;
- (b) Determine the make-up of the product line and recommend pricing practices to be followed; and, if the answer is in the affirmative, identify by name each such employee and describe fully his activities with reference to prices."

Answer to Interrogatory #62:

During the year 1958 it was one of the responsibilities of Seymour Nordenberg, Director of Advertising and Merchandising and Chairman of the Advertising and Merchandising Committee of Sealy, Inc., to participate with that Committee in the determination of the make-up of the Sealy product line and the recommendation of suggested retail prices with respect thereto. In 1956, Sealy staff member, Joseph Callick, was responsible for participating with the Advertising and Merchandising Committee in performing the functions described above, as were staff members C. V. Bovard, G. C. Shappell, R. C. Stewart and E. H. Bergmann in 1957 and 1958. During 1959 and 1960 staff members E. H. Bergmann, Howard Haas, G. C. Shappell and Carl N. Singer performed such functions in conjunction with the Sales Promotion and Product Planning Committee of Sealy, Inc.

The activities with reference to suggested retail prices of the Sealy staff members referred to above consisted of a general exercise of their professional expertise as required [fol. 1401E] by their employer, Sealy, Inc. In particular, such staff members continually studied competitive conditions in the bedding industry for the purpose of formulating programs which would permit Sealy products to compete successfully with the products of other manufacturers of bedding.

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[fol. 1402E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1168

Min NL PD Pensacola Flo July 2 1956 347PM

Sealy—
Marty Rudick

Care Sealy Mattress Co Balto

I have been informed by our Washington store that you are holding up our orders due to some misunderstanding. Please continue filling our special orders so that our business reputation is not jeopardized pending my return. Will return to Washington in about one week.

Gloria S. Bennett, U.S. Merchandise Mart.

Received July 9, 1956.

[fol. 1403E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1169

SEALY MATTRESS COMPANY

Factories in Principal Cities

Makers of the Famous Sealy Posturepedic Mattress

2307 Hollins Street—Baltimore 23, Maryland

Gilmer 5-7010

July 27, 1956.

Mr. Norman Bennett
U. S. Merchandise Mart, Inc.
1121 14th St. N.W.
Washington 5, D. C.

Dear Mr. Bennett:

We are in receipt of your letter of July 26th, for which please accept our thanks.

Your letter, however, does not give us the complete information that we have been asking of you. We had asked that the shipment in question be traced and the original date of order as shown on your original order be sent to us, (or a photostat of same). We have also asked that your firm go on record with us in writing, stating that you will not at any time ship Sealy merchandise outside of this immediate area.

I trust that you can appreciate the fact that we require the copy of your order mentioned above, and the written understanding in reference to shipments, not for our own purposes only, but must forward this information into our National Offices, because of the scope of this situation on a national basis.

We will be looking forward to receiving this further information from you within the next few days, and wish to thank you for your cooperation in this matter.

Yours very truly, Sealy Mattress Company, Marty Rudick.

MR:ap

[fol. 1404E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1170

August 21, 1956.

Mr. Marty Rudick
Sealy Mattress Company
2307 Hollins St.
Baltimore 23, Md.

Dear Mr. Rudick:

Your letter of July 27, was delayed in reaching my attention. I have been very busy shifting one of our stores to Annapolis, Md.

Please clarify your request that we certify not to ship Sealy outside of this immediate area by specifying the limits of this area.

As you know, we conduct advertising to service personnel on a national scale. Does this mean that service personnel at outlying bases would be prevented in ordering by mail from Washington? Please clarify the restrictions.

Very truly yours, U. S. Merchandise Mart Inc.,
Norman Bennett, President.

[fol. 1405E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1171

SEALY MATTRESS COMPANY

Factories in Principal Cities

Makers of the Famous Sealy Posturepedic Mattress

2307 Hollins Street—Baltimore 23, Maryland
Gilmor 5-7010

August 29, 1956.

Mr. Norman Bennett
American Home
1121 14th St. N.W.
Washington 5, D. C.

Dear Mr. Bennett:

We are in receipt of your letter of August 21st. In answer to your question, the area to which we refer, is the greater metropolitan Washington, D. C. area.

In reviewing your past orders, and noting the shipping destinations, it seems that this is where all of your merchandise obtained from us has been sold. The few exceptions to this, have been the ones that have caused the repercussions of which you are no doubt aware.

Although you probably and undoubtedly have the right to ship merchandise which you purchase wherever you choose to ship it, it is within the interests of pleasant business relations that we have asked you to refrain from shipping our merchandise out of this greater metropolitan Washington area. I certainly think that the few sales that might be involved during the period of a year's business, would hardly be worth the trouble and jeopardy that those sales might make for both of us.

I will certainly appreciate hearing from you as soon as possible as to your feelings and intentions in reference to the above. Thank you for your cooperation.

Yours very truly, Sealy Mattress Company, Marty
Rudick.

MR:ap

[fol. 1406E] IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1172

September 10, 1956.

Mr. Marty Rudick
Sealy Mattress Company
2307 Hollins Street
Baltimore 23, Md.

Dear Mr. Rudick:

In reference to your letter of August 29th, please be assured that we will not ship Sealy Bedding to other than customers who place their orders in the Washington area stores. We assume our new Annapolis store will be included in this area.

Even though we do not believe this restricting to be justified in all cases, we are doing so in the interest of pleasant business relations.

Very truly yours, American Home Division of U. S.
Merchandise Mart, Norman Bennett, President.

NB:hr